DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From India

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

ACTION: Notice.

EFFECTIVE DATE: December 29, 1999.

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The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1999).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from India are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from India,* 64 FR 41202 (July 29, 1999)) (''*Preliminary Determination*''), the following events have occurred:

In August, 1999, the Department issued two additional supplemental questionnaires to Steel Authority of India, Ltd.(''SAIL''), in response to which the respondent filed submissions on August 17, 1999. In September 1999, the Department conducted verification of SAIL, the sole respondent in the instant investigation. A public version of our report of the results of this verification is on file in the Central Records Unit (''CRU''), room B–099, of the main Department of Commerce building, under the appropriate case number. On November 18, 1999, a public hearing was held at the main Department of Commerce building and was attended by interested parties.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular 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. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1998, through December 31, 1998.

Facts Available

Based on our analysis of the facts on the record of this investigation, we continue to find that SAIL failed to act to the best of its ability in reporting accurate and verifiable information to the Department. At the preliminary determination, we found that because of 1) the problems with the electronic databases that SAIL submitted; 2) the lateness and incompleteness of narrative portions of the questionnaire responses; and 3) the lack of product-specific costs, SAIL's questionnaire response could not be used to calculate a reliable margin. As a result, we utilized adverse facts available as the basis of the preliminary margin.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that

has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

The Department has further determined that the use of facts available is appropriate for SAIL for purposes of the final determination, pursuant to section 776(a)(2)(A), (B), and (D) of the Act. With respect to subsection (A), at verification the Department discovered that SAIL failed to report a significant number of home market sales; was unable to verify the total quantity and value of home market sales; and failed to provide reliable cost or constructed value data for the products. *See Home Market and United States Sales Verification Report* (''*Sales Report*''), dated November 3, 1999; *see also Cost of Production and Constructed Value Verification Report* (''*Cost Report*''), dated November 3, 1999. With regard to subsection (B), SAIL was provided with numerous opportunities and extensions of time to fully respond to the Department's original and supplemental questionnaires, as well as ample time to prepare for verification. However, even with numerous opportunities to remedy problems, SAIL failed to provide reliable data to the Department in the form and manner requested.

With respect to section 776(a)(2)(D) of the Act., we note that as a result of the widespread problems encountered at verification, SAIL's questionnaire responses could not be verified. *See Sales Report* and *Cost Report. See Memorandum to the File: Determination of Verification Failure* (''*Verification Memo*''), dated December 13, 1999.

Section 782(d) provides certain conditions that must be satisfied before the Department may, subject to section 782(e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

With respect to section 782(d), we gave SAIL numerous opportunities and extensions to submit complete and accurate data. As stated in the Preliminary Determination, SAIL's questionnaire and deficiency questionnaire responses were found to be substantially deficient and untimely for purposes of calculating an accurate antidumping margin. *See Preliminary Determination.* However, subsequent to the preliminary determination we issued two additional questionnaires and further extensions to SAIL presenting it yet additional opportunities to submit a complete and accurate electronic database. Nevertheless, the Department found at verification that the final submission was again substantially deficient (*see* the *Department's Position* below; *see Verification Memo*; *and see Sales Report* and *Cost Report*). Therefore the Department may ''disregard all or part of the original and subsequent responses,'' subject to subsection (e) of section 782.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) provided that:

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot be served as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it has acted to the best of its ability in providing the information and meeting the requirements established by the administering authority * * * with respect to the information, and

(5) The information can be used without undue difficulties.

See Section 782(e) of the Act. In the instant investigation, record evidence supports the following findings:

First, with respect to section 782(e)(1), as stated in the Preliminary Determination and the sales and cost verification reports, SAIL was given numerous extensions to submit accurate data which it failed to do. In fact the last submission of cost data filed on August 18, 1999, was a database which contained unreadable electronic versions of SAIL's cost of production which did not include any constructed value information.

Second, with respect to section 782(e)(2), we were not able to verify SAIL's questionnaire response due to the fact that essential components of the response (*i.e.,* the home market and cost databases) contained significant errors.

Third, with respect to section 782(e)(3), the fact that essential components of SAIL's response could not be verified resulted in information that was incomplete and unreliable as a basis for determining the accurate margin of dumping.

Fourth, with respect to section 782(e)(4), SAIL, as stated in the home market sales verification report, did not sufficiently verify the accuracy and reliability of its own data prior to submitting the information to the Department, thereby indicating that it did not act to the best of its ability to provide accurate and reliable data to the Department.

Finally, with respect to section 782 (e)(5), the U.S. sales database contained errors that, while in isolation were susceptible to correction, however when combined with the other pervasive flaws in SAIL's data lead us to conclude that SAIL's data on the whole is unreliable. As a result, the Department does not have an adequate basis upon which to conduct its analysis to determine the dumping margin and must resort to facts available pursuant to section 776(a)(2) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. *See* the Statement of Administrative Action (''SAA'') at 870. To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b), the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review* (''*Pipes and Tubes from Thailand*''), 62 FR 53808, 53819–53820 (October 16, 1997).

In addition to repeated problems in the timeliness and completeness of submissions and the workability of computer tapes, verification revealed that SAIL's data was significantly inaccurate, incomplete or otherwise unreliable. Therefore, pursuant to 776(b) of the Act, we conclude that SAIL did not cooperate to the best of its ability during the course of this investigation and consequently we used an adverse

inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest of the margins alleged in the petition, as facts available.

Corroboration

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.103–316 (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

To corroborate the range of the margins alleged in the petition, we examined the basis of the rates contained in the petition. The petition margins were based on both price-to-price and price-to-constructed value comparisons. Petitioners' calculated export price was based on U.S. price offerings, with deductions taken for international movement charges. We compared this with information from U.S. Customs and found them consistent. Petitioners based normal value on prices for comparable products sold in the home market obtained from market research. Petitioners calculated constructed value based on their own production experience adjusted for known differences. With regard to the normal values contained in the petition, the Department is aware of no other independent sources of information that would enable us to further corroborate this information. We compared the petition information with reliable information obtained during the investigation, primarily SAIL's financial statements and other published materials from the questionnaire response and found them consistent. Finally, with respect to the relevance of the margin used for adverse facts available, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that the selected margin is not appropriate. *See Memorandum to the File: Corroboration of the Petition Data,* dated July 19, 1999, on file in the CRU.

Finally, we note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition, and mindful of the legislative history discussing facts available and corroboration, we consider the petition margin we are assigning to SAIL in this investigation as adverse facts available to be corroborated to the extent practicable.

Interested Party Comments

Comment 1: Facts Available

Respondent argues that the Department should determine that SAIL cooperated to the best of its ability to accurately report its export sales to the U.S., and as a result the Department should not base its final determination on total adverse facts available.

SAIL argues that it responded in a timely manner to all of the Department's requests for information and also cooperated in the conduct of a 21-day verification to ensure the accuracy of its responses. SAIL admits that it had difficulties in verifying the accuracy of its home market sales, and cost of production data, but argues that its U.S. sales data were verified without significant problems and should be used as a basis for calculating the final antidumping duty margin in this determination. SAIL further argues that although it had difficulties in verifying the home market sales, the majority of these problematic sales would not have been used for comparison purposes as they were either of defective or off-grade merchandise or merchandise that would not be used for comparison purposes to the U.S. products. Accordingly, although SAIL's home market database lacks the degree of precision required by the Department, respondent argues that there is sufficient reliable information about the home market sales for the Department to evaluate and determine the ''true'' picture of SAIL's home market sales. Finally, while acknowledging that there were problems associated with its cost of production data, SAIL contends that the Department verified the underlying accuracy of SAIL's books and records and also verified the plant-specific average plate costs. Therefore, the Department has a reliable basis from which to determine the relevant costs of the products sold to the United States. SAIL argues that extrapolating information from this reliable information, the Department could determine that SAIL's margin would be in the range of zero to 1 percent. As a result, SAIL proposes that the Department compare the U.S. prices in the submitted Section C responses to the normal value and constructed value alleged in the petition, after comparing these figures to the home market prices from Section B responses, and cost of production data in the Section D responses to evaluate the reliability of the petition information.

In SAIL's view, the Department cannot ignore the U.S. sales information submitted and verified and resort to total adverse facts available. SAIL relies on the premise that the ''basic purpose of the statute'' is to determine a margin as accurately as possible citing *Rhone-Poulenc Inc,* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990). Furthermore, respondent argues that the Court of International Trade (''CIT'') has upheld the Department's use of best information available where the respondent's data was more accurate than the data in the petition and where the Department appeared to verify the data and make adjustments to it. *See Micron Technology, Inc.* v. *United States,* 893 F. Supp. 21, 35 (CIT 1995) (''*Micron*''). In the present determination, SAIL argues that the Department should not ignore SAIL's probative, accurate U.S. sales data and rely on less probative export information as facts available which would result in inaccurate dumping margins. SAIL repeats its claim that the Department has accurate and verified U.S. sales data; reliable home market sales data for the product most similar to the U.S. product; and average plant-specific costs sufficient to demonstrate that home market sales were not made below cost; and therefore, can make an accurate price comparison.

SAIL's secondary argument is that the URAA requires the use of its timely and verified information on the record of this investigation. SAIL argues that, pursuant to section 782(e) of the Act, the Department must consider information if: (1) the information has been submitted in a timely manner; (2) the information can be verified; (3) the information can serve as a reliable basis for reaching the applicable determination; (4) the interested party

demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. *See* section 782(e) of the Act. Citing multiple prior Department determinations, SAIL argues that it has met all these criteria, therefore, the submitted U.S. sales data must be used to calculate the margin. (*See Toyota Motor Sales, U.S.A. Inc.* v. *United States,* 15 F. Supp. 2d 872 (CIT 1988); *Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834 (CIT 1998); *see also Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 30790 (1999); *Certain Preserved Mushrooms from Chile,* 63 FR 56613 (1998)). SAIL argues that it would be arbitrary and capricious for the Department to reject SAIL's accurate U.S. sales data in favor of an adverse facts available margin from the petition and that the Department must use SAIL's U.S. data and partial facts available for the other missing data in calculating SAIL's final dumping margin on the basis that SAIL cooperated to the best of its ability during the instant investigation. Citing Annex II of the Agreement on Implementation of Article VI of the GATT 1994 (''AD Agreement''), SAIL contends that where a party acts to the best of its ability, its information should not be disregarded even though the information is not ideal in all respects.

Petitioners counter SAIL's arguments on the grounds that SAIL failed to act to the best of its ability. As support for their contention, petitioners cite to SAIL's omissions of both home market sales and cost data, and its selective compliance with the Department's instructions. Petitioners note that the Department attempted to accommodate SAIL in the course of the investigation and during verification; however, SAIL continued to fail to submit a full, readable, and complete database for use in the Department's investigation.

Furthermore, petitioners argue that SAIL understates the gravity of the errors in its database. Petitioners cite to numerous factual discrepancies in the home market sales and cost databases including: (i) inability to reconcile total quantity and value; (ii) under-reported sales values and over-reported quantities; (iii) omitted home market sales; (iv) double-counted transactions; (v) misreported gross unit prices, product characteristics, and taxes; (vi) misreported thickness and width values in the home market database; (vii) over and under-reported freight costs in the U.S. sales database; (viii) misreported product characteristics for U.S. sales; (ix) failure to provide a constructed value database; (x) problematic yield adjustments to reported costs; (xi) understated material costs; (xii) failure to provide a ratio analyses for the RSP plant; (xiii) failure to provide product-specific costs; (xiv) failure to report the conversion factor of theoretical to actual weights; and (xv) failure to explain the reason for transactions with an identical home market control number (''CONNUMH'') having different variable costs. As a result, petitioners argue that there was no reliable information on the record (as evidenced by the Department's verification reports) to enable the Department to calculate a margin. Petitioners cite *Pipes and Tubes from Thailand,* at 53814, in support of their contention that without reliable cost data there is no means of ensuring the accuracy and reliability of the home market sales data. In addition, petitioners also argue that the errors with the U.S. database (such as errors in reporting product characteristics of a majority of U.S. sales) render it deficient, incomplete, and inaccurate. As a result, the Department cannot calculate a margin and must resort to total adverse facts available.

Petitioners also contest SAIL's invocation of Annex II of the AD Agreement. According to petitioners, SAIL's information was considerably less than ideal. Petitioners cite to the problems, listed above, with the home market sales, cost, and U.S. sales databases to counter SAIL's argument regarding the reliability of its information. Petitioners argue that the calculation of a margin comparing SAIL's U.S. sales information to the normal value (''NV'') and constructed value (''CV'') from the petition would lead to an untenable result that would encourage selective reporting in the future and undermine the statutory goal of calculating an accurate margin. Moreover, petitioners state that the premise of SAIL's argument relies on the belief that the U.S. sales database is without errors, which is not factually supported by the Department's findings at verification. *See Sales Report.*

Finally, petitioners state that the standard set forth in section 782(e) of the Act does not support the use of U.S. sales information upon the rejection of home market sales and cost of production information. Petitioners state that section 782(e) does not direct the Department to use part of response where essential components of the response are not otherwise useable. *See Frozen Concentrated Orange Juice from Brazil,* 64 FR 43650 (August 11, 1999). As a result of the data problems described above, as well as SAIL's inadequate review of its database for accuracy and completeness, petitioners argue that respondent clearly failed to act to the best of its ability to provide the Department with requested information, and therefore use of total adverse facts available is warranted for SAIL.

Petitioners rely on two recent cases to demonstrate the Department's methodology for selecting total adverse facts available under circumstances similar to those in the present investigation. First, petitioners argue that the Department normally rejects a respondent's response in its entirety when price-to-price comparison is impossible due to a reporting failure on the behalf of the respondent. In *Heavy Forged Hand Tools Finished or Unfinished, With or Without Handles from the People's Republic of China* (''*Tools from China*''), 64 FR 43659 (August 11, 1999), the Department rejected the response and used total adverse facts available when it discovered, at verification, that a significant portion of sales were missing for four months of the POR and that it could not ''successfully perform the completeness test.'' *See Tools from China,* 64 FR at 43663. Second, petitioners argue that total adverse facts available is warranted where the questionnaire response is extremely deficient in other respects such that the Department cannot reliably use the reported data to calculate a margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany* (''*Steel Wire Rod from Germany*''), 63 FR 8953 (February 23, 1998). In that case, the Department found that the response was deficient and an unreliable basis to calculate a margin as a result of ''numerous inconsistencies'' in the reported sales and cost data. Petitioners argue that the fact pattern of the present case is similar to both *Tools from China* and *Steel Wire Rod from Germany;* therefore, the Department's only choice is to apply total adverse facts available in determining the dumping margin for SAIL's transactions during the POI.

SAIL takes issue in the petitioners' claim that the facts here are similar to those in *Tools from China* and argues that petitioners' reliance on *Tools from China* is misplaced, since there was a determination in that case that the respondents were withholding information and generally acting in ''bad faith.'' Contrary to the circumstances in that case, SAIL argues that there is no evidence of ''bad faith'' on its part in the instant investigation.

Department Position:

We disagree with respondent that total adverse facts available are not warranted for this determination. SAIL

has consistently failed to provide reliable information throughout the course of this investigation. At the preliminary determination we relied on facts available because widespread and repeated problems in SAIL's questionnaire response rendered it unuseable for purposes of calculating a margin. These problems recurred despite our numerous and clear indications to SAIL of its response deficiencies. Even though we rejected use of SAIL's questionnaire response at the preliminary determination, because the company was seemingly attempting to cooperate, albeit in a flawed manner, we continued to collect data after the preliminary determination in an attempt to gather a sufficiently reliable database and narrative record for verification and for use in the final determination. The Department also rejected petitioners' request that verification be cancelled in light of the response deficiencies. However, as evidenced by the summary below, SAIL was unable to provide the Department with useable information to calculate and determine whether sales were made at less than fair value.

Throughout the responses to the Department's original questionnaire and supplemental questionnaires there were ongoing, serious problems in the areas of completeness, timeliness, and workability of computer tapes. Regarding completeness, the responses repeatedly made the statement that certain data were not available and would be supplied later (*i.e.,* during verification). Instances of this unavailability included unreported home market sales, a substantial number of sales dates, product specifications, supporting documentation, and so forth.

Regarding timeliness, on several occasions SAIL called requesting extensions past the already extended deadlines for its submissions. On other occasions SAIL submitted unrequested clarifications to previous responses and responses to questions after the required deadline, in effect providing itself with an extension to respond to the Department's questionnaires. In fact, several of SAIL's submissions were returned to it due to untimely filing. *See* Letter to Respondent's Counsel on July 7, 1999, *Antidumping Duty Investigation of Certain Cut-to-Length Carbon Quality Steel Plate (''CTL Plate'') from India.*

Regarding computer tapes, repeated technical problems with the submitted data resulted in our inability to load, run, and analyze the data, despite a significant amount of time and attention from the Department. Moreover, at verification we discovered that SAIL's last submission (made just prior to verification and to provide the Department with useable cost of production and constructed value data) was not only incomplete, but also riddled with inaccuracies to the point where SAIL's data remains unuseable. SAIL attempted to provide the Department with a new tape at verification containing revised cost of production and constructed value data which the Department rejected as untimely.

Furthermore, at verification, we discovered that: SAIL had failed to report a significant number of home market sales; we were unable to verify the total quantity and value of home market sales; SAIL failed to report accurate gross unit prices; SAIL failed to reconcile costs of production to its audited financial statements; and SAIL failed to provide constructed value data on the costs of products produced and sold to the United States. *See Sales Report* and *Cost Report.*

Furthermore, we disagree with SAIL's characterization of its U.S. sales as accurate, timely, and verified. In fact, the U.S. sale database contained certain errors, as revealed at verification. *See Sales Report; see also Verification Memo.* Moreover, we disagree with SAIL that we are required by the Act to use SAIL's reported U.S. prices. SAIL cites to *Toyota Motor Sales, U.S.A., Inc.,* v. *United States,* 15 F. Supp. 2d 872 (CIT 1998); *Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834 (CIT 1998); *Antidumping Duty Investigation on Sales at Less-Than-Fair-Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia,* 64 FR 40457 (July 19, 1999); *Antidumping Duty Investigation on Sales at Less-Than-Fair-Value: Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 30790 (1999), as support for the contention that the Department does not resort to total facts available if there are deficiencies in the respondent's submitted information. It is the Department's long-standing practice to reject a respondent's questionnaire response *in toto* when essential components of the response are so riddled with errors and inaccuracies as to be unreliable. *See Steel Wire Rod from Germany.* SAIL's argument relies on a mischaracterization of our practice with respect to so-called ''gap-filler'' facts available. SAIL argues that the Department should fill in the record for home market sales, cost of production, and constructed value as if there were a mere ''gap'' in the response, as opposed to the entire record. Thus respondent's arguments and citations to these cases are inapposite. In each of the above-mentioned cases, the majority of the information on the record was verified and useable; there were only certain small areas of information which required the Department to facts otherwise available to accurately calculate a dumping margin. The Department's long-standing practice of filling in gaps or correcting inaccuracies in the information reported in a questionnaire response, often based on verification findings, is appropriate only in cases where the questionnaire response is otherwise substantially complete and useable. In contrast, in this case, SAIL's questionnaire response is substantially incomplete and unuseable in that there are deficiencies concerning a significant portion of the information required to calculate a dumping margin. To properly conduct an antidumping analysis which includes a sales-below-cost allegation, the Department must analyze four essential components of a respondent's data: U.S. sales; home market sales; cost of production for the home market models; and constructed value for the U.S. models. Yet SAIL has not provided a useable home market sales database, cost of production database, or constructed value database. Moreover, the U.S. sales database would require some revisions and corrections in order to be useable. As a result of the aggregate deficiencies (data problems and SAIL's responses), the Department was unable to adequately analyze SAIL's selling practices in a thorough manner for purposes of measuring the existence of sales at less than fair value for this final determination. *See Sales Report* and *Cost Report.*

We also disagree with SAIL's reliance on the *Micron* decision in arguing that we should use its U.S. sales data as facts available. In the *Micron* case, the CIT affirmed the Department's use of respondent data as non-adverse facts available for a discrete piece of data which required adjustment. Specifically, the Department had concluded that a respondent used an improper methodology in reporting depreciation expenses. In selecting non-adverse facts available in order to properly adjust the depreciation expenses, the Department relied on calculations proposed by the respondent, which were specific to the subject merchandise, rather than calculations proposed by petitioner, which were based on broader assets. Thus, the facts of the *Micron* case are quite different from this case, where the Department must apply total adverse facts available because SAIL's data on the whole is unreliable.

Respondent also cites to section 782(e) of the Act as support for its

argument that the Department should utilize the verified U.S. sales in calculating a dumping margin in the instant investigation. Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) provided that subsections (1), (2), (3), (4), and (5) of section 782(e) are met. In the instant investigation, record evidence supports the finding that SAIL did not meet these requirements (*see, Facts Available* section above).

With regard to each respective subsection of 782(e): (1) SAIL did not provide information in a timely manner; (2) the information submitted could not be verified; (3) essential components of the information (*e.g.,* home market sales and cost information) are so incomplete that it cannot be used as a reliable basis for reaching a determination; (4) SAIL did not act to the best of its ability in providing the information and meeting the requirements established by the administering authority; and (5) the information cannot be used without undue difficulties. Accordingly, we are applying a margin based on total facts available to SAIL in the final determination. *See, Facts Available* section above.

Accordingly, pursuant to section 776(a)(2) of the Act, the Department has determined that the information on the record is unusable and is not a reliable basis upon which to calculate a margin in this investigation. Moreover, because we determine that SAIL has not acted to the best of its ability, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest margin alleged in the petition, as facts available.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from India that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for SAIL. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
SAIL	72.49
All others[1]	72.49

[1] The Act normally prohibits inclusion in the ''All Others'' rate of any margins determined entirely on the basis of facts available, pursuant to section 776. However, where the estimated weighted-average margin is based entirely on facts available, we must use any reasonable method to establish the estimated ''All Others'' rate for exporters and producers not individually investigated. *See* section 733(d)(1)(ii); 735(c)(5)(B). In this case, we have determined that a reasonable method is to use 72.49 percent, the highest margin alleged in the petition, which was also the source of our facts available margin for SAIL. This is consistent with the Department's practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela,* 63 FR 8946, 8948 (1998).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33228 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–818]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

Final Determination: The U.S. Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from India. For information on the estimated countervailing duty rate, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition for this investigation was filed by Bethlehem Steel Corporation; U.S. Steel Group, a unit of USX Corporation; Gulf States Steel, Inc.; IPSCO Steel Inc.; Tuscaloosa Steel Corporation; and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India,* 64 FR 40438 (July 26, 1999) (*Preliminary Determination*), the following events have occurred. We issued a supplemental questionnaire on July 29, 1999, and we received a response to that supplemental questionnaire on August 6, 1999. From August 8 through August 20, 1999, we conducted a verification of the information submitted by the respondents. *See* Memoranda to David Mueller, Director, Office of AD/CVD Enforcement VI, dated September 20, 1999, ''Verification of the Questionnaire Responses of the Government of India (GOI)'' and ''Verification of the