DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part

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

ACTION: Notice of Final Results of the Antidumping Duty Administrative Reviews of Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada and Determination Not to Revoke in Part.

SUMMARY: On August 19, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length (CTL) carbon steel plate from Canada. These reviews cover four manufacturers/exporters of corrosion-resistant carbon steel and two manufacturers/exporters of CTL carbon steel plate), and the period August 1, 1997, through July 31, 1998. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have made certain changes in these final results. These changes are discussed in the section on ''Interested Party Comments'' below.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman at (202) 482–4106 (Continuous Colour Coat (CCC)); Michael Strollo at (202) 482–5255 (Dofasco, Inc. and Sorevco Inc. (collectively, Dofasco)); Mark Hoadley at (202) 482–0666 (Gerdau MRM Steel (MRM)) and National Steel Co. (National); Elfi Blum at (202) 482–0197 (Stelco Inc. (Stelco)); or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Background

On September 29, 1998, we published in the **Federal Register** (63 FR 51893) the notice of initiation of administrative review of the orders on certain CTL carbon steel plate and certain corrosion-resistant carbon steel flat products from Canada for the period August 1, 1997 through July 31, 1998.

On August 19, 1999, we published in the **Federal Register** (64 FR 45228–301) the preliminary results of the administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain CTL carbon steel plate from Canada. We gave interested parties an opportunity to comment on our preliminary results. For corrosion-resistant carbon steel, we received written comments from CCC, Dofasco, and Stelco, and from the petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., AK Steel Corporation, LTV Steel Co., Inc. and National); for CTL carbon steel plate, we received comments from Stelco and the petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company). We have now completed these administrative reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) Certain corrosion-resistant carbon steel flat products, and (2) certain CTL carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are 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 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular 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 from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, certain CTL carbon steel plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 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 in this review are flat-rolled products of non-rectangular 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 from this review is grade X–70 plate. Also excluded is CTL carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Normal Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than normal value (NV), we compared the Export Price (EP) or Constructed Export Price (CEP) to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of the preliminary results of review notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Determination Not to Revoke in Part the Order on CTL Steel Plate

On August 21, 1998, and August 31, 1998, respectively, MRM and Stelco submitted requests, in accordance with section 351.222(b) of the Department's regulations, that the Department revoke the order covering CTL carbon steel plate from Canada with respect to their sales of this merchandise.

In accordance with section 351.222(b)(2)(iii) of the regulations, these requests were accompanied by certifications from MRM and Stelco that they had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and would not do so in the future. The Department conducted verifications of MRM's and Stelco's responses for this period of review. Prior to considering whether it is appropriate to revoke an order pursuant to section 351.222(b)(2) of the regulations, the Department ''must be satisfied that, *during each of the three (or five) years*, there were exports to the United States *in commercial quantities* of the subject merchandise to which a revocation or termination will apply.'' See 19 CFR 351.222(d)(1) (emphasis added). In other words, the Department must be satisfied that the company participated meaningfully in the U.S. market during each of the three years at issue, and that past margins are reflective of a company's normal commercial activity.

On January 15, 1999, Stelco submitted comments supporting its revocation request. On January 19, 1999, petitioners submitted factual information pertaining to Stelco's performance and the data Stelco submitted to the Department in support of its revocation request.

Based on the record, we find that Stelco did not sell merchandise in the United States in commercial quantities during the current (fifth) administrative review period. During the period of review (POR) covered by the fifth administrative review (August 1997 though July 1998), Stelco made only a few sales in the United States. Moreover, Stelco's total sales volume during this POR was only 47 tons of subject merchandise.[1] By contrast, during the period covered by the antidumping investigation, which was only six months long, Stelco made several thousand sales totaling approximately 30,000 tons.[2] In other words, Stelco's sales for the *entire year* covered by the fifth review period were only 0.157 percent of its sales volume during the *six months* covered by the investigation. Similarly, during the fourth POR (covering the period August 1996 through July 1997), Stelco sold approximately 2,000 tons of subject merchandise in the United States. While this amount is small in comparison to the amount sold prior to issuance of the order, it is more than 40 times greater than the amount sold during the period covered by the fifth administrative review. Consequently, although Stelco received a *de minimis* margin in the fifth administrative review, this margin was not based on commercial quantities within the meaning of the revocation regulation. The number of sales and total sales volume is so small, both in absolute terms, and in comparison with the period of investigation and other review periods, that it does not provide any meaningful information on Stelco's normal commercial experience. In light of this fact, we cannot conclude that the antidumping duty is no longer necessary to counteract dumping. Therefore, we find that Stelco does not qualify for revocation from the order on steel plate under section 351.222(b)(1)(i) and (d)(1).

With respect to MRM's request for revocation, we have decided not to revoke the antidumping order with respect to MRM at this time. On May 28, 1998, the Department initiated an anti-circumvention investigation of MRM based upon information that MRM was circumventing the antidumping duty order on cut-to-length plate by adding small amounts of boron to plate products covered by the order. *Cut-To-Length Carbon Steel Plate From Canada; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 29179 (May 28, 1998). We find that the issue of whether a company is engaged in circumventing an antidumping duty order is relevant to whether that company has satisfied the criteria for revocation under section 351.222 of the Department's regulations. *See Color Television Receivers From the Republic of Korea: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of Order (in Part)*, 61 FR 32426 (June 24, 1996); *see also Samsung Electronics Co., Ltd. v. United States*, 946 F. Supp. 5, 10 (CIT 1996), *aff'd*, 129 F.3d 135 (Fed. Cir. 1997) (''Commerce has initiated both anticircumvention and changed circumstances reviews which will address whether the antidumping duty order should be revoked.''). In light of the information before the Department concerning MRM's alleged circumvention of the order and the

[1] Stelco's response (public version) to Section A of the Department's questionnaire in the current administrative review of CTL carbon steel plate from Canada (Oct. 26, 1998) at Exhibit A–1.

[2] Stelco's response (public version) to Section A of the Department's questionnaire in the antidumping duty investigations of certain flat carbon steel (CTL plate) products from Canada (Sept. 11, 1992) at Exhibit 1.

Department's ongoing anti-circumvention investigation of MRM, we find that MRM has not satisfied the requirements for revocation given that the issue of MRM's alleged circumvention of the order remains unresolved. Although the Court of International Trade has issued an injunction with respect to the Department's anti-circumvention proceeding in *Co-Steel Lasco and Gerdau MRM Steel* v. *United States*, Ct. No. 98–08–02684, we note that the injunction is preliminary and that the Court has not yet finally decided the case on its merits. Because the Department expects to proceed with the anti-circumvention investigation following the litigation in this matter, and because a determination on circumvention is relevant to the determination of revocation, the Department has determined to withhold MRM's revocation pending resolution of the anti-circumvention investigation.

Duty Absorption

On October 28, 1998, petitioners in the corrosion-resistant carbon steel case requested that the Department determine whether antidumping duties had been absorbed during the POR for Dofasco, CCC, and Stelco; and petitioners in the CTL carbon steel plate case requested that such a determination be made for MRM and Stelco. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, or in 1996 or 1998 for orders in effect prior to January 1, 1995 (transition orders), whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review is of a transition order and was initiated in 1998, we have made a duty absorption determination in this segment of the proceeding.

In this case, Dofasco sold to the United States through an affiliated importer and also acted as its own importer. In all other cases, the producer was the importer of record. Therefore, all companies meet the definition of affiliation within the meaning of section 751(a)(4) of the Act. With respect to corrosion-resistant carbon steel, we have determined that there is a *de minimis* dumping margin for Dofasco's sales. Therefore, we determine that no antidumping duties have been absorbed by Dofasco on its U.S. sales of corrosion-resistant carbon steel during the period of review.

For Stelco, 22.63 percent of its U.S. sales were made at positive dumping margins, and for CCC, 20.38 percent of its U.S. sales were made at positive margins. CCC and Stelco have provided evidence that they charged their unaffiliated customers an amount equal to the cash deposits required on individual sales. CCC and Stelco argue that this is sufficient to indicate that there has not been duty absorption. However, the documentation only indicates that the cash deposit rate was passed on to the unaffiliated customer, and no statement or agreement by the producer/importer and unaffiliated customer, indicating that the unaffiliated customer will ultimately pay all the antidumping duties due, was submitted. We presume that the duties will be absorbed for those sales which were dumped, unless there is evidence (*e.g.,* an agreement between the affiliated importer and the unaffiliated purchaser) that the unaffiliated purchasers in the United States will pay the full duty ultimately assessed on the subject merchandise. Although in this case certain companies have provided invoices which separately list an amount for estimated antidumping duties which they are charging their unaffiliated purchasers, this is not evidence of payment of antidumping duties by the customer, and none of these companies has presented evidence of agreements with unaffiliated purchasers to pay ultimately assessed antidumping duties. Therefore, we find that the antidumping duties have been absorbed by the above-listed firms. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 62 FR 31568 (June 10, 1997).)

With respect to CTL carbon steel plate, we have determined that there are no dumping margins for MRM and Stelco. Therefore, we find that antidumping duties have not been absorbed by MRM and Stelco on their U.S. sales of CTL carbon steel plate.

Interested Party Comments

CCC

Comment 1: Imputed U.S. Credit

CCC contends that, in determining the appropriate short-term interest rate, the Department erred in using the average U.S. prime rate as the basis upon which to calculate CCC's U.S. imputed credit expense. CCC argues that the Department's Policy Bulletin 98.2 maintains that the Department's practice is to use the Federal Reserve's weighted-average rate for commercial and industrial loans maturing between one month and one year from the time the loan is made. CCC notes that the Department has used the weighted-average rate for commercial and industrial loans in the last two administrative reviews of this case. CCC states that the interest rate it provided in its section C response, which is based on the Federal Reserve's weighted-average data for commercial and industrial loans for the POR, should be used instead of the average prime rate, in accordance with the Department's Policy Bulletin 98.2.

Petitioners argue that the average prime rate used by the Department to value CCC's U.S. credit expense is correct. Petitioners cite two cases in which the Department used the prime rate for imputing credit expense: *Industrial Phosphoric Acid from Belgium: Final Results of Antidumping Duty Administrative Review*, 63 FR 55087 (October 14, 1998) and *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305 (February 9, 1999). Petitioners also argue that the rate proposed by CCC is improper because it involves mainly foreign money market rates, and the Department's practice requires interest rates to be calculated in the currency in which the transaction was made.

Department's Position: We agree with CCC. We have used the average short-term lending rates calculated by the Federal Reserve, as outlined in Policy Bulletin 98.2. Policy Bulletin 98.2 states a preference for the Federal Reserve's average rate on commercial loans as the basis of the short-term interest rate. Policy Bulletin 98.2 recognizes that, while using the U.S. prime rate is "reasonable," it is not preferable because the prime rate usually represents the minimum borrowing rate available in the U.S. market, instead of an average, and does not necessarily represent a short-term borrowing rate that a respondent might realize in the usual course of business. Although this rate may include foreign money market rates, as noted by petitioners, the Federal Reserve collects this data by surveying 348 domestically chartered commercial banks and 50 U.S. branches and agencies of foreign banks; therefore, this data accurately reflects the experience of businesses for borrowing dollars in the United States. The Department's standard practice, as described in Policy Bulletin 98.2, in a case where a respondent has no short-term borrowings in the currency of transaction, is the following: ''For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted-average rate for commercial and industrial loans maturing between one month and one year from the time the loan is made.'' (Policy Bulletin 98.2, at 7) Accordingly, we have applied the average short-term lending rates calculated by the Federal Reserve.

Dofasco

Comment 1: By-Product Offset for Industrial Coke

Dofasco argues that the Department improperly denied an offset to Dofasco's cost of production (COP) for by-product profit from sales of industrial coke. Dofasco claims that, as an integrated producer, it must produce coke to produce steel. Dofasco maintains and operates three batteries that produce industrial coke. Dofasco asserts that, in order to meet its requirements for steel production, it must operate all three batteries since operating two batteries does not produce enough coke to meet its steel production requirements. Therefore, the production of coke is an unavoidable consequence of steel-making, and as such, should be treated as a by-product in the production of subject merchandise.

Petitioners contend that coke is an intermediate product, not a by-product, in the production of subject merchandise. Petitioners assert that, in determining whether a product should be treated as an intermediate product, as opposed to a by-product, the Department, as established in *Titanium Sponge from Japan: Final Determination of Sales at Less Than Fair Value* (*Titanium Sponge*), 49 FR 38687 (October 1, 1984), examines whether (1) it is manufactured in separate facilities; (2) its quantity of production could be determined by management and is not determined by the production of the subject merchandise; and (3) its production was not an unavoidable consequence of the manufacturing of the subject merchandise. Petitioners contend that Dofasco, like any coke manufacturer, must produce its coke in specialized coke oven batteries, while the subject merchandise, corrosion-resistant carbon steel, is produced in an entirely separate and distinct mill. Petitioners also argue that the amount of coke produced by Dofasco is entirely independent from the amount of subject merchandise produced. Petitioners maintain that Dofasco can manufacture coke without producing any corrosion-resistant carbon steel at all; conversely, Dofasco can manufacture corrosion-resistant carbon steel without producing coke. In addition, petitioners assert that, since coke is fully consumed in the steelmaking process, it can not be considered a by-product.

Department's Position: We agree with petitioners that coke is not a by-product of the steel-making process. Coke is a material that goes into making steel, not a product that results from the same process that yields steel. Nor does that fact that coke is necessary to make steel mean that coke is produced along with steel in the same process. Therefore, for these final results, we continue to deny Dofasco's requested offset to COP for revenue from sales of industrial coke. We have continued to use the amount that Dofasco reported for its average, per-unit coke production cost as part of the cost of steel-making. Thus, only the cost of coke used in the production of steel is included in the steel cost of production. No cost of coke that was sold is reflected in the steel COP.

Comment 2: Foreign Exchange Gains as an Offset to COP

Dofasco argues that the Department's denial of its foreign exchange gains as an offset to net interest expense is, in effect, an improper use of facts available. Dofasco maintains that it cooperated throughout the review process by answering all questions and supplemental questions. Dofasco also contends that it cooperated with the Department during verification and answered all questions asked of it. In addition, Dofasco argues that it reported the foreign exchange gains as an offset to net interest expense early in the proceeding but the Department never once asked Dofasco to provide any additional information on the offset. Therefore, Dofasco argues, the Department should allow the offset to net interest expense for its reported foreign exchange gains.

Department's Position: We agree with Dofasco. Foreign exchange gains are normally taken as an offset to the elements of COP to which they are relevant. Since we do not know the source of these foreign exchange gains, we disallowed an offset in the preliminary results. However, because Dofasco treated these foreign exchange gains as cost-of-sale adjustments in its business records, and because we did not request any information from Dofasco concerning the source of these foreign exchange gains, we have determined that it is appropriate to include them in the calculation of Dofasco's COP for these final results. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 64 FR 56759 (October 21, 1999).

Comment 3: Offset to COP for Baycoat Profit

Dofasco argues that the Department's failure to allow an offset to Dofasco's COP for profit that was remitted to Dofasco by Baycoat Partnership (Baycoat) is contrary to the dictates of the North American Free Trade Agreement (NAFTA) Panel Decision in *In the Matter of Corrosion-Resistant Steel Flat Products from Canada,* Panel No. USA–97–1904–3, 1999 FTAPD LEXIS 2 (January 20, 1999)(NAFTA Panel Decision). Moreover, Dofasco contends, it is contrary to the Department's own remand determination in that case.

Dofasco maintains that, in the review that was the subject of the NAFTA Panel Decision, respondent Stelco was charged a transfer price for painting services that exceeded the actual costs of Baycoat to provide painting services, even though Baycoat, which was 50% owned by Stelco, remitted 50% of its profits at the end of each year back to Stelco. Dofasco contends that the NAFTA Panel rejected the Department's decision to use the inflated transfer price rather than the actual cost, stating that ''{w}hen the transfer price is artificially high between affiliated parties, as in this case, application of the 'highest' standard yields a result at odds with the 'actual cost' object of the statute.''

Dofasco maintains that, in accordance with the NAFTA Panel's instructions, the Department recalculated Stelco's cost of production by adjusting the transfer price for Baycoat services to Stelco, in order to account for Baycoat's profit remittances to Stelco. Dofasco asserts that it is the other partner in the joint venture with Stelco; and, like Stelco, Dofasco pays Baycoat for painting services and receives a share of remittance of profit at the end of the year. Accordingly, Dofasco argues, it is entitled to the same type of adjustment to the reported Baycoat transfer price that the Department granted to Stelco, pursuant to the NAFTA Panel remand. Specifically, Dofasco claims, the Department should allocate total per-unit Baycoat profit (Dofasco's per-unit profit, as derived by Dofasco, multiplied by two), by multiplying it by the ratio of the value charged to Dofasco by Baycoat to the total value produced by Baycoat, or simply rely on the cost data already submitted by Dofasco in its response to Section D of the Department's questionnaire.

Petitioners counter that the Department properly valued the major inputs purchased from Baycoat at the transfer price. Petitioners cite subsections 773(f)(2) and (3) of the Act, which address the treatment of transactions between affiliated parties for the purpose of calculating COP or constructed value (CV). Petitioners contend that subsection 773(f)(2) permits the Department to disregard the transfer price for a transaction between a respondent and an affiliated supplier if, and only if, the transfer price does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. Similarly, petitioners maintain subsection 773(f)(3) permits the Department to disregard the transfer price (or market price) for a major input if it has reasonable grounds to believe or suspect that such price is less than the cost of production of such input. Accordingly, petitioners argue, the statute requires in this case that the Baycoat inputs be valued at the transfer price.

Petitioners also argue that, under section 19 U.S.C. 1516a(b)(3), a court in the United States is not bound by a final decision of a binational panel. Petitioners cite *Live Swine From Canada; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 52408 (October 7, 1996) (*Live Swine From Canada),* to support its claim that panel decisions are not binding precedent on the Department, and are not binding on subsequent administrative determinations, but are binding only on the particular matters presented which are based on the particular administrative record subject to review. Thus, petitioners argue, the Department, in this review, is under no obligation with respect to the Binational Panel's decision in that review. Further, petitioners assert that it was only in order to comply with the Panel's instructions that the Department adjusted the Baycoat transfer price for remitted profits.

Finally, petitioners maintain that, in its remand determination, the Department reiterated its position that because the transfer price is not below cost, it should be an appropriate basis for valuing the input provided by Baycoat.

Department's Position: We agree with petitioners that valuing Baycoat coating services at the Baycoat transfer price is the correct method to arrive at actual cost for the producer of subject merchandise. As stated in the *North American Free Trade Agreement-Final Remand Determination,* Article 1904 Binational Panel Review, U.S.A.–97–1904–3 (June 14, 1999) (*Final Remand Determination*), this practice is consistent with the Department's antidumping regulations, which require that the Department normally value inputs supplied by affiliated persons at the transfer price between the entities, provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input. *See* 19 CFR 351.407(b).

Moreover, the Department's practice of using the highest of the market price, actual transfer price, or cost of production has been upheld by the CIT in *Mannesmannrohren-Werke AG* v. *United States,* Slip Op. 99–118 (Ct. Int'l Trade Oct. 29, 1999). In that case, the Court held that the plain language of the statute makes clear that ''although Commerce may use an affiliated party's cost-of-production to value a major input, it may *only* do so when (1) Commerce has 'reasonable grounds to believe or suspect' that the cost-of-production exceeds the transaction value reported; and (2) the cost-of-production exceeds the market value of the input.'' *Id.* at 14.

Further, as in the *Final Remand Determination,* the Department considers the factual circumstances in this case to fit neatly within the circumstances contemplated by sections 773(f)(2) and (f)(3) of the Act. That is, since (1) Baycoat is a supplier affiliated with Dofasco; (2) the coating services provided by Baycoat constitute a major input into the production of corrosion-resistant carbon steel; and (3) there is no market value available (Baycoat only provides coating services for its joint venture owners), the higher of transfer price or cost of production would apply. These statutory provisions ensure that transactions between affiliated parties occurring at less than the affiliate's cost of production are not used as the basis of the Department's calculation of cost of production of the producer of subject merchandise. Thus, when affiliated party transactions occur at invalid prices, *i.e.,* below cost or below market value, then the Department may make an adjustment to the costs recorded in the books and records of the respondent. *See* also ''Department's Position'' on Stelco's ''Comment 3,'' below.

Furthermore, we agree with petitioners that a NAFTA panel decision does not constitute binding precedent upon agency determinations in subsequent administrative proceedings. *See Porcelain-On-Steel Cookware From Mexico: Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 25908 (May 12, 1997) and *Live Swine From Canada.* Nevertheless, in determining whether to continue or modify our practice in any given area, we consider seriously every decision by a NAFTA panel and its implications in subsequent reviews. On the input valuation issue, as discussed above, there are split decisions from the CIT in *Mannesman* v. *United States* and from a NAFTA panel *In the Matter of Corrosion-Resistant Steel Flat Products from Canada.* In *Mannesman* v. *United States,* the Department's interpretation of the major input rule was upheld as a reasonable interpretation of the statute. We continue to believe that our interpretation of these statutory provisions is reasonable. Therefore, in the instant case we have continued to value Baycoat's painting services using the transfer price from Baycoat to Dofasco.

Comment 4: U.S. Credit Expenses

Petitioners argue that the Department should recalculate Dofasco's U.S. credit expenses based on its practice of using the respondent's own weighted-average short-term borrowing rate in the currency of the transaction. Petitioners contend that, because Dofasco had short-term borrowings in U.S. dollars, Dofasco should have used that rate for purposes of its U.S. credit expense calculation. Petitioners cite *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From Chile,* 63 FR 56613 (October 22, 1998) and *Policy Bulletin 98:2, Imputed Credit Expenses and Interest Rates.*

Dofasco claims that petitioners have mischaracterized its short-term borrowings. Dofasco argues that the situation surrounding its short-term borrowing was unique and not representative of its normal commercial practices. Dofasco contends that, in previous cases, the Department has excluded aberrant rates when those rates were not representative of normal commercial borrowings by the respondent, citing the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea,* 64 FR 17342 (April 9, 1999). Dofasco argues that, in this case, the loan in question was exceedingly rare, and did not represent normal commercial borrowing conditions for Dofasco. Dofasco argues that, had it financed its receivables through bank borrowings, it would have used the rate that was available to it for borrowings of a longer period of time.

Department's Position: The Department's practice is to calculate the U.S. credit expense using a short-term interest rate tied to the currency in which the sales are denominated. This interest rate should be based on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. (*See Policy Bulletin 98:2, Imputed Credit Expenses and Interest Rates.)* Therefore, we have applied the various interest rates available to Dofasco to the sales which best reflect the terms of the rates' availability, respectively. For further information, see the proprietary Final Analysis Memorandum for Dofasco, February 15, 2000 (*Dofasco Analysis Memorandum),* on file in room B–099 of the Commerce Department.

Comment 5: Costs for iron ore

Petitioners argue that, pursuant to section 773(f)(2) of the Act, the Department should reject the transfer price for Dofasco's purchases of iron ore from its affiliated supplier, Wabush Mines, and revalue the iron ore at market price. As the basis of market price, petitioners cite prices paid by other steel companies to a different Dofasco affiliate. For further details, see *Dofasco Analysis Memorandum.*

Dofasco contends that testing the transfer price from one affiliated supplier to Dofasco against the transfer price from another of Dofasco's affiliated suppliers to its unaffiliated customers is not a valid test of a transfer price to a market price. To make such a comparison, Dofasco argues, would be tantamount to concluding that there is only one market price for any major input, regardless of the economic situation of the supplier. Dofasco also argues that the market price petitioners suggest is actually for a different kind of pellet than that purchased from Wabush. Dofasco claims that this would create an ''apples to oranges'' comparison. Finally, Dofasco maintains that petitioners' attempt to inflate Dofasco's true cost for Wabush iron ore would be contrary to the major input rule. In support, Dofasco cites the NAFTA panel decision discussed above, where the Panel held that it was unlawful for the Department to automatically choose the inflated transfer price over input cost. For these reasons, Dofasco argues, the Department should continue to use the reported cost/transfer price in its calculations for the final results.

Department's Position: In accordance with section 773(f)(2) of the Act, the Department determines the highest of transfer price or market price. As Dofasco notes, the sale that petitioners suggest indicates market price is, in fact, of a different type of pellet than that purchased by Dofasco from Wabush. Currently, we have no information on the record of this review whereby to assess the significance of any differences between the different types of pellets in terms of physical properties or market value. We do not consider a price between the companies proposed by petitioner to constitute a valid basis upon which to determine a market price for Dofasco's purchases from Wabush. Therefore, we have continued to value Dofasco's iron ore from Wabush at the higher of transfer price or cost, which, in this case, are identical.

Comment 6: Ministerial Error

Petitioners claim that the Department, in its model match and margin programs, used an incorrect or partial home market data set, and, as a result, the Department did not perform an arm's-length test. Therefore, petitioners argue, the Department should base its final results on the complete home market data set.

Dofasco agrees with petitioners' comments regarding ministerial errors.

Department's Position: We agree with petitioners and Dofasco, and have corrected these errors for these final results.

Stelco

Comment 1: The Merits of Stelco's Request For Revocation—Commercial Quantities

Stelco disagrees with the Department's preliminary determination not to revoke the order on CTL carbon steel plate with regard to Stelco. Stelco states that it has fulfilled all the requirements of section 351.222(b) of the Department's regulations for revocation of the antidumping duty order in part. Stelco points out that the Department determined that Stelco did not engage in dumping of subject merchandise during the third and fourth review periods (1996–96 and 1996–1997, respectively). Stelco points out that, in the fifth review, the Department again preliminarily determined that Stelco did not dump subject merchandise. In addition, Stelco submitted the necessary certification in its request for revocation.

Stelco further states that the Department denied Stelco revocation because it did not sell to the United States in commercial quantities during the current review period. Stelco argues that the term ''commercial quantities'' has not been defined under the statute or regulations, and that its usage has been to confirm that sales were *bona fide*. Furthermore, Stelco suggests that the term commercial quantities refers to the volume of individual shipments rather than to the total volume of all shipments. Stelco claims that the quantity of each of Stelco's shipments to its U.S. customers corresponds with its normal individual shipments to its customers.

Stelco asserts that it has been Department practice to consider even one single shipment to constitute commercial quantities, and that a decreased sales volume is not considered no volume at all, citing *Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727, 49729 (September 23, 1996) (*BSS from Germany*). Stelco further argues that, in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy*, 60 FR 10959, 10967 (February 28, 1995) (*AFBs from Italy*), the Department agreed with respondent that there is nothing in the Department's regulations which would preclude revocation even when sales are considered minimal. Stelco points out that the *bona fide* nature of its sales has not been contested. Stelco argues that, even when there is a severe drop in exports, the Department does not automatically terminate its revocation analysis. (*See Pure Magnesium from Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part*, 63 FR 26147 (May 12, 1998) (*Pure Magnesium from Canada; Preliminary Results 96/97*) at 26148–9.)

Petitioners state that the Department was correct in finding Stelco ineligible for revocation. Petitioners argue that Stelco failed to demonstrate that it shipped CTL carbon steel plate in commercial quantities during the fifth administrative review and, therefore, failed to demonstrate that it was able to obtain zero or *de minimis* margins while selling at normal commercial levels in the U.S. market for all three consecutive years. Consequently, petitioners argue, Stelco does not qualify for revocation under sections 351.222(b) and (d)(1) of our regulations.

Petitioners point out that section 351.222(b)(2) of the Department's regulations requires that, to establish eligibility for revocation, a company must meet two threshold requirements: (1) [o]ne or more exporters or producers covered by the order have sold the merchandise at no less than NV for a period of at least three years, and (2) it is not likely that those persons will in the future sell the subject merchandise at less than NV. Petitioners contend that it is the Department's longstanding practice to consider whether sales have been made in commercial quantities in making its revocation decision. (*See Steel Wire Rope From the Republic of*

Korea; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 63 FR 17986, 17989 (April 13, 1998) (*Steel Wire Rope from Korea*).)

Petitioners point out that Stelco made only a few sales, totaling 47 tons, during the fifth administrative review period, whereas Stelco made several thousand sales totaling approximately 30,000 tons during the six-month period of the antidumping investigation; that is, the volume sold during the fifth review period is only 0.157 percent of the sales volume during the period of the antidumping investigation. In addition, the sales quantity of the fifth administrative review period was very small in comparison with the sales quantity of the fourth review period. Petitioners point out that the Department rejected Stelco's revocation request in the fourth administrative review, because the total sales volume during the second administrative review (one of the three periods considered for a potential fourth administrative review revocation) amounted to only 36 tons, and thus did not constitute commercial quantities. (*See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 64 FR 2173, 2175 (January 13, 1999) (*Fourth Review Final Results*).) Petitioners argue that the above comparisons demonstrate that the sales volume in the fifth administrative review does not give any meaningful information on Stelco's normal commercial experience. Therefore, petitioners state, the zero margin does not credibly indicate that Stelco can export to the United States at not less than NV in the absence of an antidumping duty order.

Petitioners challenge Stelco's argument that commercial quantities constitute *bona fide* sales in quantities typical for shipments to individual customers. Petitioners note that the Department rejected this argument in *Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part*, 64 FR 12977 (March 16, 1999) (*Pure Magnesium From Canada; Final Results 96/97*), stating that, despite the *bona fide* nature of sales, the abnormally small aggregate quantity did not constitute sales in commercial quantities and thus could not provide a basis for revocation. (*See Pure Magnesium From Canada; Final Results 96/97*, at 12979.) Petitioners additionally point out that in *Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 50489 (September 17, 1999) (*Pure Magnesium From Canada; Final Results 97/98*) the Department determined that the commercial quantities requirement in the regulations would be redundant if commercial quantities would pertain to the *bona fide* nature of sales. (*See Pure Magnesium From Canada; Final Results 97/98*, at 50492.)

Petitioners further state that Stelco mischaracterizes the Department's decision in *BSS from Germany*, when it argues that one *bona fide* shipment could constitute commercially significant quantities. In that case, petitioners state, the Department did not revoke the antidumping duty order because it concluded that the sharp decline in shipping volume after the imposition of the order indicated that respondent in that case had problems selling subject merchandise above NV. (*See BSS from Germany*, at 49729.)

Petitioners disagree with Stelco's reference to *AFBs from Italy*, to support Stelco's claim that minimal sales are sufficient to obtain revocation. Petitioners state that in those final results the Department agreed with respondent that, although the quantities could be considered minimal, the fact that they were significantly greater than the quantity of sales on which the Department based its determination in the less-than-fair-value (LTFV) investigation, constitutes an acceptable level on which to base revocation. This, petitioners state, greatly differs from Stelco's sales record. Therefore, petitioners conclude that Stelco's zero margin for the POR was not reflective of its normal commercial experience.

Department's Position: We disagree with Stelco on the interpretation of the term "commercial quantities," namely, that in the absence of any definition in the law of the Department's regulations, the term commercial quantities should be interpreted as the volume of individual shipments. On the contrary, it has long been the Department's practice to examine the aggregate volume of total sales to the United States in determining whether sales have been made in commercial quantities. In addition, it has been the position of the Department that, relating commercial quantities to whether sales are *bona fide* would make the commercial quantities requirement in our regulations redundant. (*See Pure Magnesium From Canada; Final Results 96/97*, at 12979, and *Pure Magnesium From Canada; Final Results 97/98*, at 50492.) Commercial quantities and *bona fide* sales are two distinct and separate concepts under the law. In this case we examined whether Stelco's sales were made in commercial quantities, which is necessary to support a determination to revoke, and not whether these sales constitute *bona fide* transactions for the purpose of calculating dumping margins.

Furthermore, the two cases Stelco relies upon to build its argument, *BSS from Germany* and *AFBs from Italy*, are inapposite because the Department in those cases did not consider whether sales were made in commercial quantities as a threshold matter for purposes of revocation until its new regulations came into effect. In *BSS from Germany*, the Department specifically declined to consider commercial quantities in making its determination regarding revocation.

We agree with petitioners that Stelco has not sold subject merchandise in commercial quantities at not less than NV for three consecutive years, as required by sections 351.222(b)(2)(i) and (d)(1) of the Department's regulations. A few sales totaling 47 tons of CTL carbon steel plate is so insignificant in comparison with the volume of sales prior to the imposition of the antidumping order, as well as in comparison with subsequent review periods, as to fail to constitute a commercial quantity. Therefore, we do not consider Stelco sales to have been made in normal commercial quantities. Accordingly, we are not revoking the antidumping order on CTL carbon steel plate with respect to Stelco. For further details, see the "Determination Not to Revoke" section above.

Comment 2: The Merits of Stelco's Request For Revocation—Unusual Occurrences

Stelco states that, in 1997–98, its plate mill underwent major modernization and upgrading, which was accompanied by planned shutdowns as well as by "substantial unanticipated and unrelated mill shutdowns." Stelco claims that such a magnitude of plate mill shutdowns has never occurred at Stelco. These unusual occurrences, Stelco states, severely impacted its production capacity. Stelco claims that there was a severe reduction in production from the fourth to the fifth POR due to these "unusual occurrences" which resulted from the plate mill modernization. Stelco further points out that it is company policy to support the domestic market, and that the company under these unusual circumstances did make all the sales that it could to its U.S. customers. Stelco distinguishes its situation from that which occurred in the *Pure Magnesium* reviews, claiming that its level of sales in each review was the result of ''normal commercial behavior.''

Petitioners contend that mill upgrades as undertaken by Stelco do not constitute an unusual occurrence as defined in the Department's *Notice of Proposed Rules*, namely, that the Department will take into consideration natural disasters and other unusual occurrences that have an impact on a company's capacity utilization. (*See Notice of Proposed Rules*, 61 FR 7308 (February 27, 1996), at 7320.) Petitioners argue that it is not uncommon for companies to periodically upgrade a mill and to have planned shutdowns during the upgrade process. Petitioners also state that a planned upgrade, as undertaken by Stelco, must be distinguished from the permanent shifting of production to the United States that characterized the case in *Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order: Brass Sheet and Strip from the Netherlands*, 64 FR 48760, 48765 (September 8, 1999) (*BSS from the Netherlands-Preliminary Results*), because it was not a permanent change in the company's commercial behavior.

Petitioners further argue that Stelco itself did not appear to consider the plate mill upgrade an unusual occurrence up to the point that it sought revocation, because, for example, Stelco did not report any closure or restructuring costs in its original section D questionnaire response with respect to a question on plant closures, shut-downs, or restructuring costs during the POR. (*See* Stelco's Section D Questionnaire Response (Public Version) (November 23, 1998), at D–27 & D–49.) Petitioners note that Stelco should have reported these additional costs as part of its cost of production, as required in the Department's questionnaire.

Petitioners point out that, although Stelco refers to major unexpected and unrelated mill shut-downs as unusual occurrences, in fact unanticipated delays and shut-downs are not unusual, but are instead a common part of the maintenance and operation of steel mills. In support of this argument petitioners cite *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329, 24355 (May 6, 1999), where the Department determined that the loss from a one-time blast furnace accident was not an unusual occurrence.

Petitioners state that Stelco cannot establish a causal relationship between the planned and unplanned mill stoppages and the major reduction in shipments to the United States. Petitioners note that, in *BSS from the Netherlands-Preliminary Results*, the Department found it very important that the unusual occurrence was the immediate cause of the decline or cessation of shipments. Petitioners argue that there is no objective information which demonstrates that the reduction in shipments is due to the plate mill shutdowns in the two documents that Stelco cites: the company's letter of January 15, 1999, requesting revocation, and the cost verification exhibit depicting Stelco's plate mill capacity in a chart from 1994 to 1998. Petitioners further argue that the plate mill capacity utilization chart constitutes unverifiable information, and is not probative.

Department's Position: We agree with petitioners that Stelco's mill upgrade does not qualify as an unusual occurrence within the meaning of the *Notice of Proposed Rules*. (*See Notice of Proposed Rules*, at 7320.) Mill modernizations, such as that of Stelco's plate mill, and accompanying plant stoppages, are not unusual, infrequent, or extraordinary events. Companies can plan in advance how to pursue their business during such times of temporary stoppages.

The severe decrease in Stelco's shipments to the United States during the fifth review period was not an unavoidable consequence of Stelco's mill modernization, but, rather, the result of Stelco's choice to give priority to the Canadian market. Had it so chosen, Stelco could have participated more fully in the U.S. market, just as it continued to participate in the Canadian market. For further information see the February 15, 2000 proprietary memorandum to the file regarding Stelco's participation in the U.S. market.

In order for us to determine that there is an unusual occurrence, there should be a permanent change that is not based on an easily-altered decision. For example, in *BSS from the Netherlands-Preliminary Results,* where the company's commercial practices were preliminarily considered to have permanently changed by shifting production of subject merchandise to the United States. (*See BSS from the Netherlands-Preliminary Results,* at 48765 & 48766.) (In that case the Department ultimately determined that the change in the company's commercial behavior was not permanent, and, therefore, the calculated margins were not reflective of the company's normal commercial activity.) In contrast, Stelco's plate mill modernization and its accompanying planned and unplanned production stoppages are temporary changes. We cannot conclude that the reduction in shipments to the United States is a permanent change, and therefore representative of normal commercial activity from this time forward.

Since the small quantity of Stelco's sales of subject merchandise to the United States during the POR cannot be attributed to an unusual occurrence, we must consider it in the context of Stelco's historical sales to the United States. Considered in this context, the small quantity of merchandise sold during this POR does not meet the commercial quantities requirement of the revocation provisions of the Department's regulations.

Comment 3: The Merits of Stelco's Request For Revocation—The Likelihood of Dumping After Revocation

Stelco states that, because it has met all the requirements of section 351.222(b)(2) of the Commerce regulations, including a demonstration that it is not likely to dump in the future, and because the Department has not made a determination to the contrary, the Department must revoke the order with respect to Stelco.

Petitioners argue that Stelco failed to address factors such as domestic and home market industries, currency movements, and Stelco's competitiveness in the U.S. market in its case brief. In addition, petitioners state that Stelco did not discuss the issues of price and cost trends, investments and production capacity in its case brief.

Petitioners contend that it is likely that Stelco would sell at dumped prices upon revocation of the order because it has substantially increased its plate mill capacity due to its modernization project.

Department's Position: Respondents must meet the threshold criterion of three consecutive years of sales in commercial quantities at not less than NV in order to be eligible for revocation. When that criterion has been met, the Department makes a determination regarding the likelihood of resumption of dumping based on the evidence on the record. (See, e.g., *BSS Germany* and *Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part,* 63 FR 6519 (February 9, 1998) (*BSS from Canada*).) Because we have determined that Stelco's POR sales were not made in commercial quantities, Stelco is not eligible for revocation. Therefore, we have not considered the likelihood criterion. (*See Pure Magnesium from Canada; Final Results 97/98,* at 50491.)

Stelco is ineligible for revocation under section 351.222(b)(2)(i), based on the fact that it has not had three consecutive years of sales in commercial quantities at not less than NV; therefore, we need not address U.S. or Canadian market conditions, or Stelco's mill expansion in process.

Comment 4: Major Input Rule—Corrosion-Resistant Carbon Steel

Stelco states that the Act requires the Department to use actual costs in the calculation of the cost of production, citing sections 773(b)(3) and 773(f)(1) of the Act. Stelco claims that, by using Baycoat's transfer price to determine Stelco's cost of coating services, the Department arrives at a cost in excess of Stelco's actual cost of production in violation of the statute. Stelco maintains that, based on the remittance of Baycoat profits to Stelco, Stelco's true costs of production will not be the same as the face value of the invoice price received from its affiliated supplier. Stelco notes that, in its cost accounting system, it records the estimated costs for coating services by Baycoat, which it adjusts based on the actual sum of all invoices. At the end of each month, Stelco adjusts its gross income by reducing its cost of sales to account for the income recognized by Baycoat. This income, Stelco explains, constitutes Stelco's 50% share of Baycoat's returned profits. Stelco explains that Baycoat is a 50/50 partnership with Dofasco, with the sole purpose of providing coating services to its owners. Therefore, Stelco maintains, valuing coating services of Baycoat without taking into account the Baycoat profits returned to Stelco, would result in a calculated cost in excess of actual cost.

Stelco further states that, with regard to the second review, the Binational Panel has ruled that the Department failed to follow the requirements of the statute by overvaluing Stelco's painting costs, noting that the Department must be mindful that the amounts used to value an input may not exceed ''the costs associated with the production and sale of the merchandise.'' (*See In the Matter of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada,* North American Free Trade Agreement Article 1904 Binational Panel Review, USA 97–1904–03 (June 4, 1998).) On September 13, 1999, Stelco states, the Binational Panel issued its decision on the second remand determination, affirming the Department's remand determination concerning its compliance with the Binational Panel's instructions. Stelco argues that the Department completely disregarded the Binational Panel's ruling in the preliminary results of the current review (1997–98), and artificially inflated the value of Baycoat's painting costs.

Petitioners state that the Department correctly valued the input purchase from Stelco's affiliate Baycoat at transfer price. Petitioners cite section 773(f) of the Act as the Department's legal basis for its applied methodology. Petitioners state that under subsection (f)(1), cost calculations for the merchandise should be based on the exporter's/producer's records, and that subsections (f)(2) and (f)(3) address inputs purchased from an affiliated party. According to petitioners, subsection (f)(2) states that the transfer price, i.e., the price generally maintained in the producer's books and records, may be disregarded if it does not reflect market value. Subsection (f)(3) states that the Department may disregard the value of a major input in favor of the cost of production if such amount is less than cost of production or market value. Petitioners argue that these subsections, read together, provide that the Department can only reject the transfer price of a major input when such price is less than the cost of production or market value. Based on the statutory requirements, petitioners state, the Department had to use transfer price for the major input in question, since the prices Stelco paid for the painting services received from Baycoat for this major input were higher than Baycoat's cost of production.

Petitioners contend that Stelco erred when it asserted that the use of transfer price was not consistent with the statute, because the Department should have utilized the most accurate cost available in valuing such a major input. Petitioners state that Stelco ignored subsections (f)(2) and (f)(3) which regulate how ''actual costs'' are calculated when a major input is supplied by an affiliate. Petitioners argue that the Department used the actual cost, which is the transfer price recorded in Stelco's own books and records. Petitioners further assert that Stelco confuses its investment interest in Baycoat with its commercial relationship, which would not have any bearing on the price of the services rendered by Baycoat.

Petitioners question Stelco's assertion that its cost for Baycoat painting services should be adjusted downward for Baycoat investment profits remitted. Petitioners state that Stelco ignores the instructions of subsections (f)(2) and (f)(3) of the Act, which require the use of transfer price in transactions between affiliated parties, unless the transfer price is below the usual market price or the transfer price is below the affiliated supplier's cost of production. Petitioners further point out that these profits remitted are not attributable to individual sales and could be earned from services performed for either of the two partners. Rather, these profits are unrelated in volume and value to coating services performed for Stelco, petitioners say. Additionally, petitioners argue that adjusting transfer price by the Baycoat profits remitted would render subsections (f)(2) and (f)(3) of the Act ineffective because the adjustment for profit would convert the transfer price to Baycoat's cost of production. Petitioners further add that market value generally includes an element of profit.

Petitioners contend the Binational Panel's decision is not binding on subsequent administrative reviews. In support of their argument they cite *Live Swine from Canada,* at 52424, and *Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 25908–01, 25914 (May 12, 1997) (*Porcelain Cookware from Mexico*). Further, petitioners point out that the Department, contrary to Stelco's assertion, did not act contrary to its own determination in the Second NAFTA Binational Panel Remand, when adjusting for Baycoat transfer price in the current review. *See Final Remand Determination.* Rather, the Department followed the decision of the Binational Panel in the second administrative review when adjusting the transfer price as instructed, while at the same time maintaining the position that the profit remitted by Baycoat would not constitute an element of cost and should be viewed as a return on investment.

Department's Position: We agree with petitioners that valuing Baycoat coating services at the Baycoat transfer price is the correct method to value this major input. As stated in the *Final Remand Determination,* this practice is consistent with the Department's antidumping regulations, which require that the Department normally value inputs supplied by affiliated persons at the transfer price between the entities, provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input. *See* 19 CFR 351.407(b).

Moreover, the Department's practice of using the highest of the market price, actual transfer price, or cost of production has been upheld by the CIT in *Mannesmannrohren-Werke AG* v. *United States,* Slip Op. 99–118 (Ct. Int'l Trade Oct. 29, 1999). In that case, the

Court held that the plain language of the statute makes clear that ''although Commerce may use an affiliated party's cost-of-production to value a major input, it may *only* do so when (1) Commerce has 'reasonable grounds to believe or suspect' that the cost-of-production exceeds the transaction value reported; and (2) the cost-of-production exceeds the market value of the input.'' *Id.* at 14.

Further, as stated in the *Final Remand Determination,* the Department considers the factual circumstances in this case to fit squarely within the circumstances contemplated by sections 773(f)(2) and (f)(3) of the Act. That is, since (1) Baycoat is a supplier affiliated with Stelco; (2) the coating services provided by Baycoat constitute a major input into the production of corrosion-resistant carbon steel; and (3) there is no market value available (Baycoat only provides coating services for its joint venture owners), the higher of transfer price or cost of production would apply. These statutory provisions ensure that transactions between affiliated parties occurring at less than the affiliate's cost of production are not used as the basis of the Department's calculation of cost of production of the producer of subject merchandise. Thus, when affiliated party transactions occur at invalid prices, *i.e.,* below cost or below market value, then the Department may make an adjustment to the costs recorded in the books and records of the respondent.

Finally, as Stelco's books and records use transfer price in recording cost of manufacturing (COM), and the transfer price is not below cost, it is an appropriate basis for valuing the input provided by Baycoat.

In addition to the propriety of using transfer price in valuing Baycoat's coating services, the Department's previous decision not to adjust transfer price to account for profit remittances was based upon the Department's finding that profit was not an element of cost. In this regard, the profit recognized by Stelco resulted from its investment in Baycoat and served to increase Stelco's equity interest in its affiliate. Baycoat's distributions to its joint venture partners are directly proportional to their ownership interests, and do not serve as price adjustments that reduce the cost of manufacturing subject merchandise. It would be inappropriate for the Department to adjust transfer prices between affiliates by the return on investment recognized due to the affiliated supplier operating at a profit or making a cash contribution. Thus, the Department would not consider this investment income to constitute an element of cost that must be accounted for in the context of section 773(f)(1)(A) of the Act. Moreover, where and to what extent affiliated companies choose to recognize profit or loss on investments is a separate and distinct business decision from the value these companies place on the inputs at issue. Affiliated companies may choose to recognize profits through one corporate entity over another for a variety of reasons, such as tax advantages, or the ability to write down losses against profits. These considerations, and the business decisions that result, however, do not alter the value of the inputs established between the parties. Our interpretation of the major input rule is that Congress intended the Department to use the transaction price between affiliated parties as the value of the input, unless that value is below cost or market price. In our view, Congress clearly did not intend that the Department examine every transfer of money between affiliated parties to determine whether the transfer price for an input is a valid reflection of its transaction value. Accordingly, we have not engaged in an examination of any money transfers between Stelco and its affiliated suppliers for purposes of valuing major inputs.

We also agree with petitioners that the final ruling of the Binational Panel applies to Stelco's 1994/95 administrative review and does not establish precedent for any subsequent cases. As stated in *Live Swine from Canada,* ''panel decisions are binding only on the particular matters presented which are based on the particular administrative record subject to appellate review. Live Swine from Canada, 14 ITRD 2388, 2404–04 (1992). Second, the Courts have recognized that collateral estoppel is inapplicable when the Department's determinations are based on different administrative records. See PPG Industries v. United States, 746 F. Supp. 119, 133–34 (CIT 1990).'' (*See Live Swine from Canada,* at 52424, and *Porcelain Cookware from Mexico.*) Therefore, we are not bound by panel decisions on previous reviews.

Comment 5: Adjustment for G&A

Stelco asserts that, in adjusting Stelco's reported cost for Baycoat coating services up to the Baycoat transfer price, the Department double counted Baycoat's interest and general and administrative expenses (G&A), as those are already included in Stelco's consolidated financial statements. Stelco states that this is inconsistent with the Department's *Final Remand Determination,* where the Department, in its adjustment, as ordered by the Binational Panel, subtracted Baycoat profit and interest and G&A from Stelco's cost for coating services by Baycoat.

Petitioners argue that Stelco's reliance on any adjustments to the Baycoat transfer price pursuant to the NAFTA Binational Panel ruling is misplaced, because in that case the adjustment was ordered by the NAFTA Binational Panel. In contrast, in the current review, the Department is not bound by any restrictions in utilizing the full transfer price, which, by its nature would include interest and G&A.

Department's Position: We agree with petitioners that the Department is not bound in its adjustment of Stelco's coating costs to transfer price. (*See Live Swine from Canada,* at 52424.)

Stelco reported two categories of coating services. In the preliminary results, we adjusted Stelco's reported costs for Baycoat coating services so that they accurately reflected the transfer price for each category of services. In calculating Stelco's COP and CV, we used this transfer price rather than Baycoat's actual costs in accordance with section 773(f)(2) of the Act. However, in our COP and CV calculations for Stelco, we inadvertently added in Baycoat's interest and G&A because Stelco submitted consolidated financial statements only, which include Baycoat's and Stelco's interest and G&A combined. To avoid such double counting, we must adjust Stelco's COP and CV for G&A expenses already accounted for in our adjustments made to Baycoat coating services.

We agree with Stelco's assertion that we double counted interest and G&A expenses for the second category of coating services. For this category of merchandise, Stelco reported Baycoat's cost. In making our adjustments to Baycoat's cost as reported by Stelco in order to arrive at Baycoat's transfer price, we added in Baycoat's total profit, without adjusting for interest and G&A, which is included in the transfer price. The double counting occurred due to Stelco's consolidation of its affiliates' expenses in its financial statements, as reported to the Department.

With respect to the first category of coating services, we disagree with Stelco's comment that the Department double counted interest and G&A expenses by not subtracting these expenses from our adjustments to Stelco's costs in order to arrive at Baycoat's transfer price. In its section D questionnaire response of November 23, 1998, Stelco stated it reported the higher of Baycoat's actual cost of coating, or Stelco's net acquisition cost, which is the ''transfer prices minus or plus Stelco's share of Baycoat's income or loss.'' (*See* Stelco's Section D response of November 23, 1998, at D–61.) Stelco did not report the actual transfer price, but only reported transfer price adjusted for profit and interest and G&A. (*See* Verification Exhibit C–16.) In making our adjustments to the cost reported by Stelco to obtain the transfer price, we added the difference between the transfer price and Stelco's reported cost. We did not adjust this difference for any amount of interest or G&A, because Stelco had adjusted transfer price for profit, interest and G&A.

Because we are subtracting Baycoat's G&A from Stelco's consolidated G&A in our COP and CV calculation in the final results, we must include it in our adjustments to Stelco's reported cost. We are correcting our calculations by adding the amount of Baycoat's interest and G&A to our adjustment of the first category coating services to arrive at an adjusted transfer price. We then subtract Baycoat's G&A per net ton for all Control Numbers (CONNUM) which obtained coating services.

Additional Changes to Final Results

Due to a clerical error in the preliminary results of this review, certain sales of CCC were not considered in the preliminary results calculation. For these final results of review, the Department has rectified this error and these sales have been included. For more information, please see the *Memorandum to the File Through Maureen Flannery from Sarah Ellerman; Analysis for Continuous Colour Coat, Ltd. for the Final Results of the Fifth Administrative Review of Corrosion-Resistant Carbon Steel from Canada for the period August 1, 1997 through July 31, 1998,* dated February 15, 2000.

Final Results of Reviews

As a result of our reviews, we determine the dumping margins (in percent) for the period August 1, 1997 through July 31, 1998 to be as follows:

Manufacturer/exporter	Margin (percent)
Corrosion-Resistant Carbon Steel Flat Products:	
CCC	1.01
Dofasco	0.16
National	5.65
Stelco	0.68
Cut-to-Length Carbon Steel Plate:	
MRM	0.00
Stelco	0.00

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b), we calculated importer-specific *ad valorem* duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer for that class or kind of merchandise made during the POR. 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 as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be the rate stated above (except that no deposit will be required for firms with zero or *de minimis* margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original 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) the cash deposit rate for all other manufacturers or exporters will continue to be the all others rates established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for CTL carbon steel plate (*see Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 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 reviews.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of our 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 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 section 353.34 (1997). 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.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and sections 351.213 and 351.221(b)(5) of our regulations.

Dated: February 15, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Ballistic Missile Defense Advisory Committee; Meeting

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session at the Consolidated Support Facility, 1901 North Moore Street, Suite 750, Arlington Virginia 22209, on March 2, 2000.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition, Technology, and Logistics), on all matters relating to BMD acquisition, system development, and technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1), and that accordingly this meeting will be closed to the public.