if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value 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) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 15.92 percent, the all others rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983).

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

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30875 Filed 12–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On June 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The reviews cover two manufacturers/exporters, Daido Kogyo, Ltd. (Daido), and Enuma Chain Mfg. Co., Ltd. (Enuma), of the subject merchandise to the United States during the period April 1, 1992 through March 31, 1993, and six manufacturers/exporters, Daido, Enuma, Hitachi Metals Techno Ltd. (Hitachi), Izumi Chain Manufacturing Co., Ltd. (Izumi), Pulton Chain Co., Ltd. (Pulton) and R.K. Excel, of this merchandise to the United States during the period April 1, 1993 through March 31, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have made certain changes to the final results of each review period. We will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: December 4, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich, Jack Dulberger, Ron Trentham or Zev Primor, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1996, the Department published in the Federal Register (61 FR 28171) the preliminary results of the above mentioned administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. At the request of petitioner and five respondents, we held a hearing on July 22, 1996.

Applicable Statute and Regulations

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

Scope of the Review

Imports covered by the reviews are shipments of roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in these reviews includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyer chain.

These reviews also cover leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. These reviews further cover chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1992 through March 31, 1993, and April 1, 1993 through March 31, 1994. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of these administrative reviews. We received timely comments from the petitioner and all respondents except Hitachi.

Comment 1: Izumi claims that sales made to its related party were made at arm's-length. Izumi asserts that there is no statutory or regulatory requirement which mandates a certain threshold percentage of unrelated party sales in order to conduct an appropriate arm's-length test. Izumi therefore requests that the Department conduct an arm's-length test on its related party sales. If the Department cannot determine whether sales to its related party were made at arm's-length, Izumi argues that those sales should be disregarded for the purpose of calculating foreign market value and constructed value in the Department's margin calculations.

Department's Position: We disagree with Izumi. An arm's-length test in this proceeding would not produce reliable results because there was an insufficient number of unrelated party sales available for comparison to related party sales. While nothing in the statute

requires a specified percentage of unrelated home market sales in order to conduct an appropriate arm's-length test, our regulations state that we ''will calculate foreign market value based on that sale [transactions between related persons] only if [the Department is] satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.'' 19 CFR 353.45(a)(1994). We therefore have the discretion to decide whether we could rely on the results of an arm's-length test. The facts in this proceeding indicate that an arm's-length test would not produce reliable results. While the sales to unrelated parties may be bona fide, because of their limited number, it cannot be established that Izumi's related party sales were made at arm's-length. Consequently, we removed such sales from the home market sales database.

We disagree with Izumi's assertion that we should use CV for those sales made to its related party if it cannot be determined that such sales were made at arm's-length. In accordance with 19 CFR 353.45(b), where related party transactions were made, we decided to base FMV on downstream sales made by such related parties.

Comment 2: Izumi states that the Department erred in assigning partial best information available (BIA) as a result of Izumi's inability to supply downstream sales on related party transactions. Izumi argues that given the nature of its relationship with its related party, Izumi does not have the economic leverage or legal basis to persuade this party to submit downstream sales information. Further, Izumi argues that since it has no control or input regarding downstream sales, it is inequitable for the Department to require information that is unreasonably difficult to obtain, or to base margins on sales in which Izumi was not involved. Izumi further contends that reliance on downstream sales information would be contrary to the intent of the statute, and the Department's regulations do not provide for margin calculations based on sales in which a respondent does not have the ability to control, or at least influence, the price.

Petitioner argues that the Department was justified in applying partial BIA. Petitioner asserts that Izumi fails to realize that the affiliation it has with its related reseller necessitates that they be considered as one entity for this proceeding. Petitioner cites to the Department's questionnaire, where it states ''[w]here a sale is made through an affiliated company, the price actually charged to the unrelated buyer must be reported.'' *See* Department's Questionnaire of May 26, 1994, at 10. Petitioner therefore contends that the refusal of Izumi's related reseller to provide downstream sales information should be considered as a refusal by Izumi itself. Further, petitioner states that an argument similar to Izumi's claim of not having a legal basis upon which to compel its related reseller to submit information was rejected by the Department in a previous segment of this proceeding. *See Roller Chain, Other Than Bicycle, From Japan,* 55 FR 42602, 42608 (1990).

Department's Position: We agree with petitioner. Izumi failed to respond to our requests for information regarding downstream sales. Although Izumi claims that it could not compel its related party to supply this information, given their affiliation, we consider the related party's non-compliance as an omission imputable to Izumi. Moreover, we assigned Izumi BIA in a previous segment of this proceeding, where circumstances similar to these in this review were found to exist. In that review, the Department's position stated in relevant part:

> 19 CFR 353.45(b) provides that the Department may calculate foreign market value based on sales made through a related party. Pursuant to 19 CFR 353.45(a), it is the Department's practice to calculate foreign market value based on prices to related parties, if the respondent can show that those sales are as between two unrelated companies (*i.e.*, that the sales were arm's-length transactions). If the respondent cannot show that the sales were at arm's-length, and the sales made through the related party are a significant percentage of all sales in the home market, the Department calculates foreign market value on the basis of the sale price to the first unrelated party * * * Izumi's refusal or inability to provide information on the sales to the first unrelated purchasers left the Department no basis with which to calculate foreign market value. *Final Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 55 FR 42608, (October 22, 1990).

Additionally, the U.S. Court of Appeals for the Federal Circuit recently noted, ''[t]he burden of production is appropriately placed on the party deemed to control the information.'' *Koyo Seiko Co., Ltd.* v. *United States,* No. 96–1116, Slip Op. (Fed. Cir. Aug. 12, 1996). There, the Court upheld our decision to apply BIA where the respondent was related to a party within the meaning of section 771(13)(D) of the Tariff Act and where the respondent failed to provide requested cost data of the related party. Similarly, in this proceeding, Izumi is related to its customer within the meaning of section 771(13)(C) and failed to provide the downstream sales information of its related party.

Section 776(c) of the Act requires us to use the best information otherwise available whenever a party refuses or is unable to provide information requested in a timely manner and in the form required. Therefore, since Izumi did not supply us with requested information, we are required to use BIA in reaching our determination.

Comment 3: Izumi states, *arguendo,* that had there been justification for the Department's use of BIA, the use of an adverse inference was not warranted. Citing *Holmes Products Corp.* v. *United States,* 16 CIT 628, 631 (1992) (*Holmes*), Izumi contends that there is no statutory requirement that an adverse inference be made in determining BIA, when a party substantially complies in a review proceeding. Further, Izumi claims that an adverse inference is based on the presumption that a party would have supplied accurate information if that information would have resulted in lower margins. In light of this, Izumi claims that since it has no influence on, or knowledge of, pricing of downstream sales, it could not be charged with having constructive knowledge that the downstream sales would be made at a rate higher than the BIA rate of 43.29 percent. Izumi also cites the Court of International Trade's (CIT) decision in *Usinor Sacilor, Sollac, and GTS* v. *United States,* 872 F. Supp. 1000, (CIT 1994) (*Usinor*) in which Izumi claims that the CIT directed the Department to select the weighted-average calculated margin as BIA because the respondent was unable to submit data of a related reseller over which it had no operational control. Izumi contends that, as the facts in this review model those of *Usinor,* the Department should use Izumi's constructed value data or the weighted average calculated margin as non-adverse BIA.

Petitioner claims that it cannot be determined whether or not the downstream sales information would have produced a higher margin for Izumi. Nevertheless, petitioner states that an adverse inference in this regard is highly likely, given the extent of the sales at issue and the affiliation between Izumi and the reseller. Further, petitioner challenges Izumi's claim that this instant review is similar to *Usinor.* Petitioner states that in *Usinor,* voluminous downstream sales data was submitted. The Department, however, rejected the submission because the resellers were not able to conduct a material trace within the time limits of the investigation. The Department did not request downstream sales

information for steel centers in which the manufacturer had no operational control, as these sales constituted a small percentage of total sales. Those sales were subject to the same cash deposit as the company's other sales.

Department's Position: We agree with petitioner. In *Holmes* as well as in *Usinor,* due to the minuscule nature of the amount of sales at issue, non-adverse BIA margins were recommended. In *Holmes,* the manufacturer ''Hoogovens did not omit data, but only provided inaccurate information, which in most instances was due to a computer conversion error, nor were the errors systematic in nature.'' *See Holmes* at 1137. In *Usinor,* the court rejected the Department's argument ''that Usinor's submissions were deficient due to Usinor's failure to report downstream sales from its minority-owned secondary steel centers.'' *See Usinor* at 1006. The court held that Usinor:

> substantially met the requirements of the original and modified questionnaire requests. Usinor supplied more data than was required under the limited reporting arrangement and provided well over 99% of the data demanded by the original questionnaire * * * The question, therefore, is whether Commerce may use adverse BIA on the sole basis of Usinor's inability to trace the source of the steel processed by its secondary steel centers.

Id. at 1001–07. However, as the downstream sales in this review would comprise most of Izumi's home market sales, Izumi's failure to report those sales could not be construed as similar in scope to the aforementioned cases. Because the omission in this case was substantial, we followed our normal practice in determining BIA.

Comment 4: Izumi states *arguendo,* that had an adverse inference been warranted, the Department should have taken the ''second-tier'' BIA rate from the most recent review in which BIA was applied, and not from a review more than ten years old. In regard to the methodology the Department should follow in assigning a BIA rate, Izumi cites a number of court decisions. In *National Steel Corporation* v. *United States,* 870 F. Supp. 1130, 1136 (CIT) 1994), the Court stated that the Department ''must be reasonable in its application of its chosen methodology.'' Further in *Atlantic Sugar, Ltd.* v. *United States,* 744 F.2d 1556, 1560 (Fed. Cir. 1984), the use of BIA was compared to an ''investigative tool'' which may be wielded as an ''informal club'' over recalcitrant parties. Izumi also cites *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*) to support its view that it is the Department's requirement that it ''consider the most recent information in its determination of what is best information.'' *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993) (*Allied-Signal*) is further cited for the proposition that the Department was required to obtain and consider the most recent information in its determination of what constitutes BIA. Izumi contends that the Department should have used as partial BIA the 17.57 percent rate assigned to Izumi in the 1989–1990 review instead of the 43.29 percent rate assigned to Izumi in the 1983–1985 review periods. Izumi claims that the 17.57 percent rate is more probative of current conditions, while the 43.29 percent rate is outdated.

Petitioner contends that the Department adhered to its standard ''two-tier'' BIA methodology in selecting the second-tier partial BIA rate. Petitioner stresses that the Department's ''two-tier'' BIA methodology is well-established and has been upheld by the courts. Further, petitioner states that the 43.29 percent BIA rate is more current than the 17.57 percent rate, since the final results of the 1983–1985 review periods (where the 43.29 percent rate applies) were published subsequent to the final results of the 1989–1990 review (where the 17.57 percent margin applies).

Department's Position: We agree with petitioner. Our ''two-tier'' BIA methodology has been upheld in numerous court decisions. *Allied-Signal* states that ''[t]he two-tier BIA methodology employed by the ITA in selecting the best information available for nonresponsive parties is a permissible and reasonable exercise of its statutory authority.'' *Allied-Signal* at 1193. The fact that the 43.29 percent rate was a ''first-tier'' rate assigned to Izumi in a previous review is of no relevance to our analysis. Our BIA methodology does not require that we determine why a particular margin was assigned in a previous review.

Further, our ''two-tier'' BIA methodology, ''like its predecessor, merely establishes a presumption that the highest prior margins are the best information available. That presumption can be rebutted by the respondent with evidence showing the actual margin to be less.'' *Rhone Poulenc* at 1190. As partial BIA, we simply adhered to our well established ''two-tier'' BIA methodology by using the highest margin ever assigned to Izumi in a previous segment of this proceeding. Izumi has not shown that the preliminary margins were demonstrably less probative of current market conditions.

Comment 5: Izumi states that the 43.29 percent rate was unjustifiably assigned as a second-tier rate since this rate was also assigned as a ''first-tier'' BIA rate to Pulton for this review. Izumi argues that the Department failed to consider the intent of 19 CFR 353.37(a) by not considering the degree to which a respondent cooperated before assigning the BIA rate. Izumi therefore states that the Department acted contrary to the purpose of the ''two-tier'' BIA system.

Further, Izumi cites to the CIT's remanded decision in a previous segment of this proceeding. Although Pulton was characterized as uncooperative in that case, the CIT ruled that the Department's ''attempt to assert a 43.54 percent rate is arbitrary and capricious and has no basis in law or fact.'' *Pulton Chain Co., Inc.* v. *United States,* 17 CIT 1136, 1144 (1993) (*Pulton*). Izumi asserts that since it has cooperated to the best of its ability in this review and since it does not have the ability to respond to the Department's request for information regarding downstream sales, the assignment of an adverse BIA rate of 43.29 percent is therefore punitive. Moreover, Izumi claims that the Department unlawfully assigned this adverse BIA, citing the following Court decisions as justification. In *Allied-Signal,* 996 F.2d 1193 (Fed. Cir. 1993), the Court stated that ''[n]either is the goal of encouraging future compliance furthered by the application of the first tier to SNFA, because it apparently has no ability to respond more completely than it already had done.'' The CIT notes in *Usinor,* 872 F. Supp. at 1007, that ''Commerce's selection of a severely adverse BIA is 'improper'* * * when the missing data is beyond the control of the respondent.''

Petitioner argues that unless an adverse partial BIA rate is imposed, Izumi would be rewarded for its inability to provide downstream sales information. Petitioner is concerned that should CV be utilized in regard to Izumi's related party sales, an unavoidable policy problem would result for the Department. Petitioner contends that ''it will open a gaping hole in the antidumping law that will permit foreign manufacturers to 'screen out' high-price transactions from the calculation of FMV. All a foreign manufacturer need do is channel high-price transactions through an affiliated reseller with the (tacit) understanding that the reseller will refuse to supply data on the resale transactions to unaffiliated customers.'' Petitioner's letter of July 15, 1996, at 7. Petitioner further argues that there will be no

incentive for Izumi to provide downstream sales information in future reviews if CV would be substituted for those sales.

Department's Position: We disagree with Izumi. As mentioned earlier, our use of a ''second-tier'' BIA rate for the sales in question follows our ''two-tier'' BIA methodology. The fact that the ''second tier'' BIA rate for a particular segment of a proceeding also equals the ''first tier'' BIA rate is a consequence of the two-tier methodology, one which has been upheld by the U.S. Court of Appeals for the Federal Circuit. *See Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993).

We also disagree that *Pulton Chain Co., Ltd.* v. *United States,* 17 CIT 1136 (1993) precludes our use of the 43.29 rate as a BIA rate. As the CIT has recognized in a case subsequent to *Pulton,* the holding in *Pulton* was limited to the ''particular facts of the case.'' *Sugiyama Chain Co., Ltd.* v. *United States,* 852 F. Supp. 1103, 1114 (CIT 1994). Moreover, the *Sugiyama* Court upheld our use of the 43.29 percent rate as a BIA rate. *Id.* Therefore, we will continue to use that rate here.

Concerning Izumi's argument that an adverse BIA rate is inappropriate because the data was purportedly not within the company's control, we refer to our reply to comment two.

Comment 6: Izumi requests that certain models of specialty chain sold in the United States should not be matched to models sold in the home market because a comparison is precluded by significant physical differences and different uses. Izumi claims that the Department's 20 percent difference in merchandise (difmer) cap does not prevent skewed results. Izumi requests that the Department compare certain U.S. models to constructed value, as performed in past reviews.

Petitioner contends that there is no evidence on the record which substantiates Izumi's claim that differences in physical characteristics and use exist between certain models sold in the United States and in Japan. Petitioner cites to the model match methodology used in the AFB proceedings, in which all parties were able to submit detailed comments in regard to reported differences in physical characteristics in order to distinguish between various bearing models. Petitioner claims that since no such briefing process occurred for this review, the Department was justified in utilizing Izumi's model-match concordance for price-to-price comparison purposes.

Department's Position: Izumi's comment is moot. Due to the Department's correction of a programming error for these final results (*see* ''Additional Programming Error,'' p. 34), certain U.S. models, including those models of concern to Izumi, are now compared to CV instead of to models sold in the home market.

Comment 7: Petitioner states that the Department should determine whether Izumi's related party resold the subject merchandise to the United States. Petitioner states that any U.S. sales made by Izumi's related party should be treated as either purchase price (PP) or exporter's sales price (ESP) transactions. Petitioner argues that Izumi and its related party should be required to certify whether or not the related party resold to the United States.

Izumi contends that petitioner's allegations in this regard are mere speculation since there is no evidence on the record to indicate that Izumi had knowledge that merchandise sold in the home market was destined for export to the United States Izumi further argues that as the Department rejected the same argument raised by petitioner in the 1990–1991 review, there is then no need to revisit this issue. Izumi states that petitioner's requirement that it provide certification whether or not the related party resold to the United States has no basis in statute or regulation.

Department's Position: We agree with Izumi. In a previous segment of this proceeding, petitioner raised this identical argument which we rejected as lacking merit since there was no indication on the record to support its allegations.

Izumi certified for this review that its U.S. and home market sales and distribution systems were reported in a complete and accurate manner. Further, as there is no information on the record on which to conclude that merchandise Izumi sold to its related party was subsequently resold to the United States, we have determined that Izumi need not submit any additional certifications regarding possible U.S. sales that its related party may have made.

Comment 8: Pulton maintains that if the Department declines to permit it to submit a response concerning its unreported U.S. sale, it should use ''second-tier'' BIA because first-tier is reserved for uncooperative respondents. According to Pulton, as soon as the error was brought to its attention, it sought permission to submit a response and continues to be willing to submit this information. Pulton alleges that under these circumstances, it is unduly harsh to apply ''first-tier'' BIA. Further, Pulton asserts that the application of ''second-tier'' BIA would be more consistent with the way in which the Department treats other respondents which have inadvertently, or even deliberately, failed to report sales.

Petitioner argues that Pulton, by failing to file an accurate questionnaire response, has totally frustrated the Department's goal of calculating an accurate dumping margin. According to petitioner, because Pulton's failure is total, it is easily distinguished from the decisions cited in Pulton's brief involving respondents who provided partial information to the Department. Moreover, petitioner asserts that where a party totally frustrates the goal of calculating accurate margins, it is reasonable to conclude that the party has '' 'significantly impede[d] the Department's review,' and accordingly, to assign it a 'first-tier' BIA margin.''

Department's Position: We disagree with Pulton that it should be permitted to submit a questionnaire response. Section 353.31(a)(ii) of our regulations allows parties to submit factual information no later than ''the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review.'' Here, the 180-day deadline had passed. Moreover, to accept a questionnaire response from Pulton would delay our completion of these reviews.

We disagree with Pulton's allegation that the imposition of ''first-tier'' BIA is unduly harsh. The Department generally assigns a respondent ''first-tier'' BIA when that respondent is considered to be uncooperative because it fails to provide requested information in a timely manner or otherwise significantly impedes the review. It was the responsibility of Pulton to submit accurate and complete information in response to the Department's questionnaire. By certifying that it had no sales and no exports to U.S. customers of merchandise subject to the finding, when in fact it did have at least one such sale, Pulton significantly impeded the Department's review.

Comment 9: Pulton claims that if the Department agrees to apply ''second-tier'' BIA, the appropriate rate would be 5.45% from the 1982–1983 review period. Pulton claims that although Izumi has a higher preliminary rate in the current review, this rate is itself largely based on BIA, and is in that sense not a calculated rate.

Petitioner states that if the Department were to apply ''second-tier'' BIA, the minimum applicable margin would be 15.92%—the margin assigned to Pulton in the final determination in the 1989–1990 administrative review. However, petitioner contends that if the

final calculated margin for Izumi or any other respondent exceeds 15.92%, that high margin should be used.

Department's Position: Since we have assigned Pulton ''first-tier'' BIA, the arguments of Pulton and petitioner are moot.

Comment 10: Pulton argues that even if the Department decides that ''first-tier'' BIA is appropriate, the 43.29% rate is inappropriate because it is based on a margin that was not finalized and because it is unduly punitive. According to Pulton, although the rate was used in a final results notice—1979–1980 administrative review—the Department recognized that it could not be used for duty assessment purposes. Moreover, Pulton claims that the CIT has recognized that 43.29% was not a valid rate for BIA (*Pulton Chain Co., Ltd.*, 17 CIT at 1144). Furthermore, Pulton asserts that if the Department continues to apply ''first-tier'' BIA, the appropriate margin would be 17.57%—the highest calculated rate in any prior review of the antidumping finding not based on the 43.29% aberrational number.

Petitioner alleges that the CIT has sustained the application of the 43.29% first-tier margin in the roller chain reviews. Further, petitioner maintains that contrary to Pulton's claims, the CIT did not hold the 43.29% rate unlawful. Moreover, petitioner argues that the 43.29% margin has been imposed as ''first-tier'' BIA on a number of occasions. Finally, petitioner states that since there is no information on the record concerning Pulton's actual margin, it is appropriate to impose the 43.29% rate.

Department's Position: We disagree with Pulton. Our use of a ''first-tier'' BIA rate for Pulton follows our ''two-tier'' BIA methodology. This methodology has been upheld by the U.S. Court of Appeals for the Federal Circuit. *See Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993).

We also disagree that *Pulton Chain Co., Ltd.* v. *United States*, 17 CIT 1136 (1993) precludes our use of the 43.29 rate as a BIA rate for *Pulton.* As the CIT has recognized in a case subsequent to *Pulton*, the holding in *Pulton* was limited to the ''particular facts of the case.'' *Sugiyama Chain Co., Ltd.* v. *United States*, 852 F. Supp. 1103, 1114 (CIT 1994). Moreover, the *Sugiyama* Court upheld our use of the 43.29 percent rate as a BIA rate. *Id.* Therefore, we will continue to use that rate here.

Comment 11: R.K. Excel claims that although foreign brokerage and handling expenses (BROKHP) were reported in yen, the Department incorrectly treated BROKHP as a dollar-denominated expense in the calculation of net U.S. price for direct sales to U.S. customers.

Petitioner states that R.K. Excel's case brief contains new factual information concerning the denomination for BROKHP.

Department's Position: We agree with R.K. Excel's claim and have made the appropriate adjustments.

It is evident from R.K. Excel's questionnaire response that BROKHP is a yen-denominated expense and the Department had no need to refer to the documentation presented in R.K. Excel's case brief to confirm its claim.

Comment 12: R.K. Excel maintains that the Department's program failed to try to match the U.S. model 50D sales and the most similar model in the home market, model 50.

The petitioner argues that given the significant number of unmatched sales, and given the likelihood that material margins would have been produced if the relevant data had been supplied, this is clearly a case in which it is appropriate to apply adverse BIA.

Department's Position: We agree with R.K. Excel. Due to a computer error, our program failed to match U.S. model 50D and the most similar model in the home market, model 50. There was missing data; this was merely a programming error. The error has been corrected for these final results. Thus, the use of BIA is not warranted.

Comment 13: Enuma's U.S. sales subsidiary, Daido Corporation (DC), contends that the Department erroneously disregarded its further manufacturing (FM) cost information for the purpose of calculating exporter's sales price (ESP), and wrongly assigned BIA to the sales in question. It requests that we recalculate the margin using the information submitted in its response instead of BIA.

Specifically, DC objects to the Department's disregarding its FM material cost information and rejecting its cost allocation methodology. DC claims that its non-material costs were allocated on a transaction-specific basis, not on a broad-based allocation formula and, therefore, were isolated to individual FM products distinct from all other FM chain.

Petitioner responds that ''under the circumstances, the Department had no choice but to apply BIA to these sales.'' It contends that DC's ''allocation ratio may be convenient, but it does *not* produce accurate further manufacturing data.'' (Emphasis in original.) According to the petitioner, the Department was justified in concluding that both the material cost information and DC's cost allocation methodology are unreliable.

Department's Position: We agree with petitioner. We specifically and clearly requested, in both the original and supplemental questionnaires, that DC ''furnish the cost of production data [and] * * * [i]f the item was transferred at 'market price,' the price should be supported by documentation of actual sales * * * to unrelated third parties.'' (Questionnaire, August 9, 1993 at 45–46; Supplemental Questionnaire, October 19, 1995 at 25 and Section E, ''Cost of Further Manufacture or Assembly Performed in the United States'' (Section E).) In addition, we stated in Section E that ''[t]he further manufacturing costs that you report in response to this section of the questionnaire should be calculated based on the actual costs incurred by your U.S. affiliate,'' and that FM costs ''include direct materials and fabrication costs actually incurred by the company.'' Section E at E–1, E–8. We find that DC did not follow our questionnaire instructions as to FM costs.

In computing FM costs, DC based its material costs on the related party transfer price (instead of actual cost of production (COP)) to value the roller chain attachments, stating only that it was ''not possible to provide production costs for the value of these attachments * * * within the time provided.'' Rather than reporting COP, DC suggested in its supplemental response that the Department use sampling to test arm's-length pricing of its attachments. However, DC failed to provide supporting detail for its sampling idea and did so at a point late in the review process. In view of this, we rejected DC's sampling concept.

In *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*, 58 FR 39729, 39754 (July 26, 1993), we determined that where a party failed to provide either purchase prices from unrelated parties from which the Department could determine whether transfer prices paid to related parties were at arm's-length, or COP data to demonstrate that the transfer prices were not less than COP, then such data did not provide a reliable basis for FMV. Here, DC's methodology was an unacceptable response to our question because it lacked COP information, sample or otherwise, and did not permit a test of transfer pricing information.

In addition, DC stated that it lacked records for the labor element of FM, preventing it from calculating the FM costs in the manner suggested by the questionnaire. Further, DC stated that it also lacked records for factory overhead and SG&A expenses attributable to FM.

DC therefore submitted a factor representing gross profit (revenue minus cost of goods sold), which it multiplied by the transfer price of the attachments used in the FM process, to estimate the missing labor, overhead, and SG&A components of the FM process. However, this methodology was unacceptable because it was unsupported by information on the record demonstrating that use of a gross profit factor accurately reflects DC's non-material FM costs.

In summary, DC provided no COP information, sample or otherwise. Accordingly, no test of transfer pricing information was possible. In addition, it provided no information on the record to support its contention that the use of a gross profit factor accurately reflects its non-material FM costs. Therefore, we determine that DC's reported FM costs do not provide a reliable basis on which to adjust USP and, as a result, we have continued to use ''second-tier'' BIA margins for the U.S. sales in question.

Comment 14: The petitioner argues that the Department should have disallowed a portion of Daido's reported home market indirect selling expenses because its data was not submitted on a transaction-specific basis. Specifically, the petitioner claims that Daido failed to report its commissions, discounts, and rebates in the home market on a transaction-specific basis. Instead, Daido included these expenses with indirect selling expenses in a category called ''Other Expenses'' and allocated them across total home market sales. Petitioner argues that commissions, discounts and rebates must be tied to individual sales transactions. It requests that, because Daido failed to provide this data, we remove these ''Other Expenses'' from this adjustment. The petitioner requests that the Department disallow Daido's ESP offset in the Department's final margin calculations.

Daido responds that the Department's position is correct and that the petitioner failed to show any legal prohibition against calculating this deduction on an allocated basis. Daido further argues that the Department's practice is to treat commissions, discounts, and rebates as indirect expenses when they cannot be tied directly to specific sales or customers. Daido further points out that the allocation here works against its favor by subjecting commissions, discounts and rebates expenses to the ESP offset cap.

Department's Position: We agree with petitioner. We requested, in both the original and supplemental questionnaires, that Daido report these expenses ''on a transaction-specific basis.'' Instead, Daido included its commissions, rebates, and discounts in its indirect sales expenses. Daido then allocated indirect sales expenses as follows: Daido's total corporate SG&A (*i.e.,* worldwide, scope and non-scope) expenses were divided by its total sales (*i.e.,* worldwide, scope and non-scope) to arrive at a percentage figure, which was then multiplied by yen per meter price to arrive at a yen per meter SG&A expense figure.

We consider rebates and discounts to be direct adjustments to price and will make adjustments for these expenses pursuant to sections 772 and 773 of the Act (which require us to determine what price was actually charged for subject merchandise). *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 Fed. Reg. 28360, 28400 (June 24, 1992); *SKF USA Inc.* v. *United States,* 874 F. Supp. 1395, 1402 (CIT 1995). Because Daido failed to report its discounts and rebates on a transaction-specific basis, as we requested, we are denying the adjustment.

Our regulations define commissions as an expense which may receive an adjustment as a difference in circumstances of sale. *See* 19 CFR 353.56(a)(2) (1994). However, Daido has requested that we treat its commissions as an indirect selling expense and grant it an adjustment pursuant to 19 CFR 353.56(b)(2) (1994) (the ESP offset provision). The U.S. Court of Appeals for the Federal Circuit has recently held that we may not include direct selling expenses as part of the ESP offset because our regulations do not allow such an adjustment. *See Torrington Co.* v. *United States,* 82 F.3d 1039, 1051 (Fed. Cir. 1996). The Court noted that the method by which an expense is allocated does not change its nature from being a direct expense to an indirect expense. Since commissions are a direct expense, we must therefore deny Daido an adjustment for this expense pursuant to the ESP offset provision.

Comment 15: Petitioner claims that the Department failed to deduct foreign inland freight incurred by DT (on behalf of Daido and Enuma) from Daido and Enuma's PP sales. Daido and Enuma contend that the Department had in fact made the deductions to PP sales for both PORs.

Department's Position: We agree with Daido and Enuma. Daido and Enuma computed foreign inland freight charges for sales to the United States in the same manner as for home market freight charges. Consequently, values for inland freight charges are identical to those for home market freight charges. Both of these adjustments appeared in the PP margin programs as INLFRTH, which was also deducted from U.S price to arrive at net adjusted U.S price.

Additional Clerical Errors

In addition to the changes we made in response to the parties' comments above, we have corrected three inadvertent clerical errors as follows:

(a) We erroneously calculated the weighted-average indirect selling expense factor used for Izumi's preliminary margin program, due to a decimal placement error; we made the appropriate correction.

(b) In analyzing Izumi's similar merchandise in the model match section of the program, we inadvertently failed to use the absolute values for the differences in merchandise percentage valuations; we made the necessary correction.

(c) The Department's second-tier BIA policy states that we will take as the BIA rate the higher of: (1) The highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the same class or kind of merchandise for any firm. However, we incorrectly identified Daido and Enuma's second-tier BIA rate. We made the necessary correction in these final results.

Additional Programming Error

We detected a minor programming error in Izumi's margin program, when merging the CV database to the U.S. sales database. We made the necessary correction.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the periods indicated:

Manufacturer/exporter	Period	Margin (percent)
Daido	92–93	0.14
Daido	93–94	0.10
Enuma	92–93	0.04
Enuma	93–94	0.18
Hitachi	93–94	*12.68
Izumi	93–94	10.01
Pulton	93–94	43.29
R.K. Excel	93–94	0.37

*No sales during the period. Rate is from the last period in which there were sales.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. Individual differences between U.S. price and NV may vary from the percentages listed above.

Furthermore, the following deposit requirements will be effective, upon publication of these final results of administrative reviews for all shipments of the subject merchandise from Japan that are 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 rates for the reviewed companies will be those rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior 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 manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.92 percent, the all others rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983).

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

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30876 Filed 12–3–96; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Scope Rulings

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

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1996, and September 30, 1996. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: December 4, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–4793.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the Federal Register a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1996, and September 30, 1996, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in January 1997 a notice of scope rulings and anticircumvention inquiries completed between October 1, 1996, and December 31, 1996, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between July 1, 1996 and September 30, 1996

Country: Germany

A–428–821 *Large Newspaper Printing Presses and Components Thereof (LNPPs), Whether Assembled or Unassembled*

R.R. Donnelley & Sons Company—A stitcher for use with a folder that is attached to a commercial printing press is outside the scope of the order. 9/24/96.

Country: People's Republic of China

A–570–820 *Certain Compact Ductile Iron Waterworks (CDIW) Fittings and Glands*

Star Pipe Products, Inc.—''Retainer Glands''—are not within the scope of the order. 9/18/96.

Country: Japan

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*

Iwatsu America, Inc. and Iwatsu Electric Co.—Certain dual use subassemblies (central processing units and read-only-memory units) are outside the scope of the order. 9/26/96.

II. Anticircumvention Rulings Completed Between July 1, 1996 and September 30, 1996

None.

III. Scope Inquiries Terminated Between July 1, 1996 and September 30, 1996

Country: People's Republic of China

A–570–504—*Petroleum Wax Candles*

Kendal King Graphics—Clarification to determine whether certain Christmas ''candle tins'' are within the scope of the order. Scope inquiry terminated on 8/29/96.

IV. Anticircumvention Inquiries Terminated Between July 1, 1996 and September 30, 1996

None.

V. Pending Scope Clarification Requests as of September 30, 1996

Country: Brazil

A–351–817 *Certain Cut-to-Length Carbon Steel Plate*

C–351–818 Wirth Limited—Clarification to determine whether profile slabs produced by Companhia Siderurgica de Tubarao and imported by Wirth Limited are within the scope of the order.

Country: Germany

A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*

Enkotec Company, Inc.—Clarification to determine whether the ''main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, outside the scope of