withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties. Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of collated roofing nails imported from Taiwan entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of merchandise for all relevant entries of CRN from Taiwan except for imports manufactured and exported by Unicatch or Lei Chu. All bonds may be released and entries of Unicatch and Lei Chu may be liquidated without regard to antidumping duties. For all other manufacturers/exporters antidumping duties will be assessed on all unliquidated entries of CRN from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its final affirmative determination notice in the **Federal Register**. On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Revised weighted-average margin percentage
S&J Wire Products Company, Ltd./ New Lan Lung	2.98
Romp Coil Nail Industries	40.28
K. Ticho	40.28
All Others	2.98

This notice constitutes the antidumping duty order with respect to CRN from Taiwan, pursuant to section 736 (a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736 (a) of the Act (19 USC 1673e (a)) and 19 CFR 353.21.

Dated: November 17, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–30400 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration A–791–804

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa

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

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, Nancy Decker, or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, (202) 482–0196, and (202) 482–3833, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR Part 353, as they existed on April 1, 1996.

Final Determination

We determine that certain cut-to-length carbon steel plate (CTL plate) from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 31963 (June 11, 1997)), the following events have occurred:

In July and August 1997, we verified the respondents' questionnaire responses. On August 22, 1997 and September 3, 1997, the Department issued its reports on verification findings for Iscor Ltd. (Iscor). On August 25, 1997 and September 15, 1997, the Department issued its reports on verification findings for Highveld Steel and Vanadium Corporation Ltd. (Highveld). On September 22, 1997, respondents submitted new computer sales listings which included data corrections identified through verification. Petitioners and respondents submitted case briefs on September 15, 1997, and rebuttal briefs on September 22, 1997. A public hearing was not held.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, 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 iron and non-alloy steel flat-rolled products not in coils, 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 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (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, 7212.50.0000. Excluded from the subject

merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1995, through September 30, 1996.

Fair Value Comparisons

To determine whether sales of the subject merchandise by respondents to the United States were made at less than fair value, we compared the Export Price (EP) or Constructed Export Price (CEP), where appropriate, to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the weighted average EPs or CEPs to weighted-average NVs during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics and level of trade.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of Investigation'' section of this notice, produced in South Africa by the respondents and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. It is our practice where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight) to convert all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons. (See Final Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from Finland, 58 FR 37122 (July 9, 1993) and Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992).) For Iscor, we found that it did not properly report a weight conversion factor. In order that all price comparisons be made on the same weight basis, we converted Iscor's reported home market and U.S. prices, quantities and costs, as appropriate, based on information on the record (see Comment 10 of the ''Interested Party Comments'' section of this notice).

(ii) Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade we compare U.S. sales to home market (or, if appropriate third country) sales at a different level of trade. For both EP and CEP, the relevant transaction for level of trade is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the EP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer expenses and the profit associated with those expenses under section 772(d) of the Act. These expenses represent activities undertaken by, or on behalf of, the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale which is used for the starting price. Movement charges, and duties and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer and we do not remove them to obtain the CEP level of trade. The NV level of trade is that of the starting price of sales in the home market. When NV is based on constructed value, the level of trade is that of the sales from which we derive SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The final user could be an individual consumer or an industrial user, but the marketing process for all goods starts with a producer and ends with a user. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are useful as they are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed customer classifications based on levels of trade. If the claimed levels are different, the selling functions performed in selling to those levels should also be different. Conversely, if levels of trade are nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Different levels of trade are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in level of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use net prices because any difference will be due to differences in level of trade rather than other factors. We use the average difference in net prices to adjust the NV when it is based on a level of trade different from that of the export sale. If there is a pattern of no price differences, then the difference in level of trade does not have a price effect, and no adjustment is necessary.

In terms of granting a CEP offset, the statute also provides for an adjustment to NV if NV is established at a level of trade that is different from that of the

CEP, provided the NV level is more remote from the factory and we are unable to determine whether the difference in levels of trade affects the price comparability between the CEP and NV. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level, but the data are insufficient to support a conclusion on price effect. The CEP offset is the lower of: (1) the indirect selling expenses on the home market sale; or (2) the indirect selling expenses deducted from the starting price in calculating CEP. The CEP offset is not automatic each time export price is constructed. It is only applicable when the level of trade of the home market sales used for NV are more advanced than the level of trade of the CEP and there is not an appropriate basis for determining whether there is an affect on price comparability.

Iscor did not claim a difference in level of trade. Consistent with our findings in the preliminary determination, for this final determination we have treated all of Iscor's home market and U.S. sales as being at a single level of trade and we have made no level of trade adjustment when matching its U.S. sales to home market sales.

Highveld claimed for the preliminary determination of this investigation, that its sales in the home market were made at two different levels of trade, and that all of its U.S. sales (both EP and CEP) were made at one level of trade. Based on our analysis of selling functions performed by Highveld, we found that a single level of trade existed in each market.

For this final determination Highveld argued that its sales in the home market were at a different, more remote, level of trade that its sales to the United States. Highveld has asserted that its sales in the home market were at a different stage in the marketing process than its CEP sales in the United States because they were to a different class of customer, and that the selling functions performed by Highveld were both qualitatively and quantitatively different between its home market and U.S. sales. Accordingly, because its home market sales are at a different, more remote, LOT than its sales to the United States, and because the Department cannot quantify whether the different LOTs affect price comparability, Highveld claims it should be granted a CEP offset.

Petitioners dispute Highveld's arguments that sales in the home market are more remote than its U.S. sales and that steel service centers and distributors are at different stages in the marketing process. Petitioners also argue that many of the selling functions described by Highveld are intangible, and because there is neither a quantitative or qualitative difference in selling functions performed in the two markets, Highveld should not be granted a CEP offset.

In determining whether separate levels of trade actually existed between the U.S. and home markets, we examined Highveld's marketing stages. In reviewing the chains of distribution and customer categories reported in the home market and in the United States, we are unable to make clear distinctions between different stages of the marketing process claimed by Highveld. Based on our review of the selling functions in the U.S. and home markets, the distinctions are not sufficient to constitute a difference in level of trade between sales in the two markets. As a result, we have not granted Highveld a CEP offset. See Comment 23 for a more complete discussion of this issue.

Export Price

We calculated the price of U.S. sales based on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation. In certain instances, however, we determined that CEP as defined in section 772(b) of the Act was a more appropriate basis for the price of the U.S. sales. These instances involved sales made by Highveld to its U.S. affiliate, Newco Steel Trading (NST or Newco), which negotiates prices and quantities with its U.S. customers, and sells the subject merchandise to the U.S. customers. Newco operates as Highveld's exclusive distributor for sales of the subject merchandise in the United States, and as such, undertakes selling activities exceeding those of processing sales-related documentation. Specifically, Newco negotiates prices for particular products with its customers on a case-by-case basis, pays Highveld for the product order based on a price agreement, and takes title to the merchandise which is physically transferred to U.S. customers by common carriers.

For both respondents, we calculated EP sales based on packed prices to unaffiliated customers in the United States. Where appropriate, and pursuant to sections 772 (a) and (c) of the Act, we made deductions from the starting price for foreign inland freight, international freight, foreign brokerage and handling, marine insurance, early payment discounts, pre-sale warehousing expenses, and U.S. Customs duties.

We calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, and pursuant to sections 772(b) and (c) of the Act, we made deductions for the starting price for the foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. Customs duties, survey expenses, stevedoring and wharfage, commissions, inventory carrying expenses, credit expenses, and indirect selling expenses. We also made an adjustment for the amount of profit allocated to these expenses, in accordance with section 772(d)(3) of the Act.

We corrected the respondents' data for certain errors and omissions found at verification and submitted to the Department. Specifically, for Iscor we corrected for certain errors and omissions found at verification as submitted by the company on September 22, 1997, and we made adjustments to U.S. and home market credit expenses, certain rebates, ocean freight, and Iscor's weight conversion factors based on findings from verification. See ''Interested Party Comments'' section of this notice. For Highveld, we corrected for certain errors and omissions found at verification as submitted by the company on September 22, 1997, and we made adjustments to U.S. and home market credit expenses, marine insurance, brokerage and handling charges, certain rebates, survey expenses, stevedoring and wharfage, inland freight, packing, U.S. warranty expenses, and certain direct selling expenses and unreported U.S. sales. See ''Interested Party Comments'' section of this notice.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. Where appropriate, we deducted rebates, discounts, credit, inland freight, pre-sale warehousing, and packing. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons. In comparisons to EP and CEP sales, we increased NV by U.S. packing costs in accordance with

section 773(a)(6)(A) of the Act. We also made adjustments to NV for physical differences in merchandise (''difmer'').

Cost of Production Analysis

As discussed in the preliminary determination, the Department conducted an investigation to determine whether Iscor and Highveld made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act.

A. Calculation of COP

We compared sales of the foreign like product in the home market with the model-specific cost of production figures for the POI. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition ready for shipment. Based on our verification of the cost responses for Highveld, we adjusted the company's COP to reflect dimensional cost differences, correct for overstated fabrication costs, include the effect of yield loss on fixed overhead, calculate interest expense using the company's consolidated financial results and correct for errors in the SG&A rate calculation. For Iscor we adjusted the COP to reflect the reclassification variance on a more product-specific basis, include certain year-end adjustments and minor corrections, account for the difference between reported costs and those recorded in its normal accounting records, include headquarters cost in SG&A, and allocate G&A over cost of sales.

B. Test of Home Market Prices

In order to test Iscor's and Highveld's home market prices, we compared their weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act). Where all sales of a specific product were at prices below the COP, in accordance with section 773(b)(1) of the Act, we disregarded all sales of that product, and calculated NV based on constructed value (CV) in accordance with section 773(e) of the Act.

D. Calculation of Constructed Value (CV)

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, interest expenses, and profit. In accordance with sections 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market. For selling expenses, we used the weighted-average home market selling expenses. Based on our verification of the cost responses submitted by Iscor, we adjusted the reported CV for the same items noted in the COP section above. Based on our verification of the cost responses submitted by Highveld, we adjusted the reported CV for the same items noted in the COP section above.

Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

In this case, the Department has applied partial facts available for various expenses and adjustments. (See ''Interested Party Comments'' section of this notice, comments 9, 10, 22, 31, 33, and 37.) We have also applied facts available to account for unreported sales. (See ''Interested Party Comments'' section of this notice, comment 28.)

Currency Conversion

For purposes of the preliminary determination, we made currency conversions using the official daily exchange rate in effect on the date of the U.S. sale. These exchange rates were derived from actual daily exchange rates certified by the Federal Reserve Bank of New York. (See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).) Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. (See Change in Policy Regarding Currency Conversions, 61 FR 9434, 9435 (March 8, 1996).) The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar and was not applicable in this case.

In this investigation, there were certain days of the POI for which we substituted the benchmark for the daily rate because the daily rate involved a fluctuation. Consistent with our findings in the preliminary determination, for the final determination we saw no reason in this case to deviate from established practice, since South Africa is not a high-inflation economy, and the decline in the rand was not so precipitous and

large as to reasonably preclude the occurrence of a fluctuation. (See Comment 14 of the ''Interested Party Comments'' section of this notice.)

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Iscor and Highveld for use in our final determination. We used standard verification procedures, including examination of relevant accounting and sales/production records and original source documents provided by respondents.

Interest Party Comments

Comment 1

Petitioners state that the Department should correct for the errors Iscor reported on the first day of verification. Iscor reported that the submission contained an error in the calculation of the tonnage allocation factor that it used to calculate the variable and fixed cost adjustments and the company's total variance. According to the petitioners, these corrections are necessary because Iscor's errors effect the differences in merchandise adjustments and the 20% test for product matching. In addition, petitioners state that Iscor omitted year-end cost adjustments from its reported costs. According to the petitioners, these year-end adjustments are costs that relate to the whole period. Thus, the Department should also correct for this omission for the final determination.

Iscor concurs with the petitioners in that the Department should adjust the company's submitted COP and CV figures for this error and omission. Moreover, Iscor states that it gave the Department the appropriate information to adjust its submitted costs for the final determination.

DOC Position

We agree with both Iscor and petitioners. The Department's normal practice is to capture production costs for the specific product sold during the period of investigation. Therefore, we have adjusted Iscor's reported costs to account for the omission of the company's year-end adjustments from costs and to correct the reported values for the minor errors pointed out by Iscor on the first day of verification.

Comment 2

Petitioners assert that Iscor's reported costs are based on a distortive methodology and that we should reject its reported COP and CV data. Petitioners claim that the submitted costs are based on estimates and not actual costs. Specifically, petitioners claim that Iscor assigns labor costs and hours on a budgeted basis and that production costs are based on approximate production quantities. According to petitioners, Iscor's product groupings are being aggregated in contravention of the statue. In addition, petitioners argue that Iscor grouped costs for various products with different physical characteristics into a single control number.

Iscor states that it acted to the best of its ability in responding to the Department's questionnaires and has reasonably determined the production cost for each control number based on the company's existing data. Contrary to the petitioners' assertion, Iscor claims that it based its submitted costs on actual production quantities. As for the petitioners' specific concerns on product groupings, Iscor contends that this issue only arose in one control number sampled by the Department during verification. Therefore, Iscor argues that this does not make its home market sales data unusable nor does it warrant a determination of facts available as suggested by the petitioners. Iscor then elaborates that the reason it grouped internal product codes with variations in costs was that this control number consists of physically similar reclassified product codes (*i.e.*, reserve stock, flange material, and scrap) and prime product codes. Iscor further points out that a variation in costs exists between these internal product codes because it values reclassified product codes in a different manner than prime product codes.

DOC Position

We disagree with the petitioners' claim that we cannot rely on Iscor's submitted costs. Although the reported COP and CV amounts were calculated based on estimated labor costs and hours, Iscor adjusted all estimated or standard amounts to actual costs by calculating and applying production variances. (See cost verification exhibit 14). In addition, we disagree with petitioners' claim that we cannot rely on Iscor's submitted costs because they are based on approximate production mix tonnages. Although the reported production mix tonnages for each CONNUM were based on estimates, we believe that Iscor's method of estimating these tonnages resulted in a reasonable measure of the actual production tonnages by CONNUM. In the ordinary course of business Iscor does not retain production information on a model specific basis as defined by a CONNUM. Iscor does, however, maintain information on its sales mix which, because the company produces largely to order, resembles its production mix. Thus, Iscor used its sales dispatches to identify the quantity sold of each model. Iscor then used this information to determine the POI sales mix which was used as a surrogate for its production mix. Iscor adjusted this surrogate production mix tonnage to equal its actual total production tonnage. To show that this methodology was reasonable, Iscor provided a POI inventory movement report for the merchandise under investigation. (See verification exhibit 21.) According to this movement report, Iscor's production tonnages and sales tonnages were essentially the same amounts during the POI.

As Iscor has pointed out, the product codes it grouped together for the one commercial plate specification control number sampled by the Department during verification consisted of prime products and reclassified prime products (*i.e.*, reserve stock, flange material, and scrap) that had similar physical characteristics. To calculate a weighted-average cost for this control number, Iscor assigned manufacturing costs to the reclassified products based on the product code under which it sold the product rather than the actual costs based on what it intended to produce. (See cost verification exhibit 13.) While we do not disapprove of Iscor grouping prime products of similar physical characteristics within the same control number, we do consider the methodology used by Iscor to account for the cost of reclassified products inappropriate. Rather, in this instance, we consider it appropriate to use the actual cost incurred to manufacture the product rather than the cost assigned to the product by Iscor based on the product's classification for sale. We note that despite the fact that Iscor captured the difference between the cost of producing the intended merchandise and that which it ultimately sold through its reclassification variance, Iscor's reclassification variance approach spreads product-specific costs from models with commercial plate specifications to other product groupings.

For the final determination, we have adjusted the submitted cost of manufacturing for control numbers with commercial plate specifications by disallowing the assigning of lower costs to reclassified products. This adjustment is limited to models with commercial plate specifications because testing of Iscor's other product groupings at verification did not indicate the same problem. To avoid double counting costs, we have reduced the reclassification and reserve stock variances by the aggregate amount in

which we increased reported costs for models with commercial plate specifications.

As for our position concerning Iscor's methodology of grouping product codes with different physical characteristics, see comment 7 for further details.

Comment 3

Iscor maintains that the Department should not adjust its reported costs for the slight deviation reported on the reconciliation worksheet that it submitted as part of its cost verification exhibit 8. Iscor claims that this deviation only shows that its reported costs based on simulated production mixes are reasonable. Iscor suggests that the Department should expect some difference because its reported production mixes are based on what it sold during the POI and not what it produced. According to Iscor, using sales quantities was necessary because the company does not maintain model-specific production information. As for the cause of the deviation, Iscor provides the following explanations. Iscor first points out that the specific product mixes it manufactured during the POI was not necessarily the same as that sold during the POI. According to Iscor, this difference will statistically equal out over time because it only produces against orders. Iscor's second explanation is that its internal product codes consist of various similar products that have a similar cost make-up. However, these product codes have different physical characteristics and dimensions which made it necessary for the company to use them more than once when compiling the reported CONNUMs. The final reason stated by Iscor is that it can attribute the difference to the fact that it has historically used a standard cost system and not an actual costing system. Thus, Iscor had to adjust its standard costs to calculate the reported costs.

Petitioners contend that the Department must adjust Iscor's reported costs to account for the discrepancy between reported costs and costs recorded in the financial accounting system. According to petitioners, Iscor's explanation for the discrepancy does not mitigate the difference. If there is indeed a different product mix between the financial and cost accounting data that results in a difference in costs that have been calculated, then it is evidence that Iscor's reported costs are unreliable. Petitioners point out that one would not expect a difference between Iscor's reported and recorded costs because it actually derived the reported section D costs from the cost of sales recorded in the financial accounting system. Moreover, the petitioners state that Iscor provided its costs on this basis specifically because it assumed that it produces products in the same ratio as sold over a representative period. If the difference in the reported costs and financial system costs disproves this assumption, then the Department should reject Iscor's costs. Otherwise, the Department should increase Iscor's reported costs by the verification finding.

DOC Position

We agree with petitioners that we should increase Iscor's reported production costs to account for the difference between the reported costs and those recorded in its accounting system. As part of verification, Iscor prepared a reconciliation worksheet that shows its reported costs are less than the costs recorded in its accounting records. Although Iscor speculated as to the cause of the reconciling difference, the company could neither document nor quantify the specific reasons why its reported costs differed from those recorded normally in its records. With respect to Iscor's explanations for the difference, the fact that the company had to use relative sales quantities to determine product specific production quantities, or that it had to include sales of different models within a product code in different CONNUMs does not justify it not capturing all costs as recorded in its financial accounting system in accordance with its home country GAAP. In addition, Iscor having to adjust its standard costs to actual for the submission should cause the reported costs to agree with the actual costs recorded in its accounting system, not cause a reconciling item. Absent support for each of the reconciling assumptions noted by Iscor, we consider it appropriate to adjust the company's reported costs to include all costs as captured by its normal accounting system.

Comment 4

Petitioners argue that the Department must adjust Iscor's reported G&A expense for methodological errors. The petitioners cite the Department's cost verification report which states that Iscor omitted headquarters' costs from G&A and allocated G&A against fixed costs rather than cost of sales. Thus, the petitioners contend that the Department should correct these figures for the final determination.

Iscor claims that it is appropriate for it to allocate general expenses as a percentage of the fixed costs incurred to manufacture each specific product code. Iscor argues that it uses this methodology in the normal course of business and that the methodology appropriately applies the G&A percentage to each product code's reported fixed cost amount. Moreover, Iscor claims that the effect of expressing the percentage in terms of fixed cost instead of total cost has little effect on the reported costs because it is basically the same amount.

DOC Position

We agree with the petitioners that Iscor should allocate its G&A expense based on cost of sales rather than fixed costs. As set forth in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38150 (July 23, 1996), our normal methodology for allocating G&A expenses to merchandise is based on cost of sales. Our methodology recognizes the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, head counts, fixed costs) is purely speculative. The Department's normal method for allocating G&A costs based on cost of sales takes into account all production factors (*i.e.*, materials, labor, and overhead) rather than a single arbitrarily chosen factor. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we allocated such costs for the final determination based on cost of sales.

In addition to allocating Iscor's G&A expenses based on the company's cost of sales, we increased Iscor's reported G&A expenses to account for headquarters costs incurred during the first half of the POI. Iscor indicated that this expense is a cost of production and that it should have included it in COP and CV. (See Iscor's cost verification report, at page 2.) Furthermore, Iscor included similar costs incurred during the second half of the POI in the submitted COP and CV.

Comment 5

Petitioners argue that ABS Grade A shipbuilding plate should not be matched to ASTM A36 plate because the majority of the shipbuilding plate was dual-certified to the A36 specification and is sold as structural plate. According to petitioners, the Department's plate specification hierarchy dictates that the more appropriate match is to the most stringent standard to which the product

is produced: the ABS grade. This grade, they allege, exhibits the closest physical characteristics.

Iscor argues that ABS Grade A shipbuilding plate is sold as structural steel and is intended to be used primarily as ASTM A36 material. Iscor claims that the Department verified Iscor's plate specification model match hierarchy.

Petitioners counter that the fact that shipbuilding plate may be used as structural plate or sold to structural plate customers is irrelevant to the Department's plate specification model match hierarchy, which focuses on physical characteristics. In petitioners' view, the fact that this steel is dual-certified to both the ABS and ASTM A36 specification does not mean that A36 is the best match. Petitioners state that because this material meets the more stringent ABS shipbuilding standard, it should be matched to a product with similar characteristics.

Iscor responds that the dual certified ABS and A36 plate was sold in the United States as a structural steel and not as shipbuilding plate. Iscor acknowledges that its customers requested the dual certification to enable them to sell this material as shipbuilding plate, but argues that the vast majority of this material was sold as A36 material. Iscor claims that matching this steel to Lloyds shipbuilding plate Grade A would ignore the first intent for the material sold in the United States, which is structural steel. Iscor likens matching the two shipbuilding steels under these circumstances to matching a pressure vessel steel to a structural steel. Iscor notes that it gives dual certified ABS and A36 material the same internal quality code as it gives to single certified A36 material, while single certified ABS plate has a different quality code. Iscor cites this as evidence that the company treats the dual certified material as equivalent to A36 and that this is the best home market match for dual certified material sold in the United States.

DOC Position

We agree with petitioners. As petitioners correctly note, the fact that shipbuilding plate may be used as structural plate or sold to structural plate customers is irrelevant to the Department's plate specification model match hierarchy, which focuses on physical characteristics of the most stringent specification to which a product is made. In this case the ABS Grade A specification is the more stringent specification and this is the specification that is controlling in selecting a home market product. As Iscor acknowledges, the reason the product sold in the United States is dual certified is that its customers requested the dual certification to enable them to sell this material as shipbuilding plate. Regardless of how this product is ultimately used by the customer, this remains the most stringent specification to which this product is made. For this final determination we are continuing to consider the best match specification for dual certified ABS/A36 plate sold in the United States to be Lloyds Grade A plate sold in the home market.

Comment 6

Petitioners allege that Iscor seemed to have difficulty reporting the correct chemical requirements of the certain plate specifications examined at verification, which may distort the appropriate product matching of grades. They state that the Department should ensure that the correct chemical requirements are reviewed when matching grades and creating product control numbers. Petitioners note that a large and divergent number of products were included in one product control number. Petitioners state that Iscor was unable to determine the actual characteristics of much of the plate in this product control number, and that therefore the Department should reject Iscor's product control numbers and base the final determination on facts available.

Iscor maintains that it correctly constructed each product control number using information that pertained to the order on which the invoice was issued. Iscor notes that petitioners' claims relate to information submitted in response to Part D of the Department's antidumping duty questionnaire, the cost portion of this review. Iscor references its response to Comment 2 above and alleges that because the effect and cost deviations were declared and explained in the costing system, the deductions made from the variances in cost are accounted for.

DOC Position

We agree with both respondent and petitioners, in part. During our review of the product characteristics for numerous sample sales, we did not identify any discrepancies in reported product characteristics between mill certificates and product specifications. That is, each product we examined met its stated product specification. This was also true of the commercial quality plate that we examined. We note that with respect to the one product control number referenced by petitioners, the relevant specification covers a broad range of steels. Again, all of the products we examined for this specification were within the stated specifications of this product. While the specifications of the product that Iscor intended to make, as opposed to the specifications that the product actually met and were sold to, are relevant in terms of analyzing costs of production, they are not relevant for this portion of our analysis.

While we agree with petitioners that at verification we found some minor inconsistencies between the product characteristics noted on Iscor's plate specification model match hierarchy tables and the actual specifications themselves, we did not find any inconsistencies which were significant enough to change the model match hierarchy. Therefore, we have not modified Iscor's plate specification model match hierarchy from the one used in the preliminary determination.

Comment 7

Petitioners allege that Iscor improperly constructed its product control numbers. They claim that material such as flange material, which is described by Iscor as the ''lowest of the low'' in the market, has generally been downgraded from other specification products, and Iscor admits that it cannot determine what the original specification might be. Petitioners assert that flange products cannot be said to be like other prime commercial products. See 19 U.S.C. 1677(16)(B)(ii). Petitioners also argue that like other non-prime products, flange material is not equal in commercial value to prime commercial products. See 19 U.S.C. 1677(16)(B)(iii). In petitioners view, flange material should not be compared to prime commercial grade or structural material sold in the United States.

Petitioners argue that certain downgraded products may also be sold outside the ordinary course of trade. Petitioners cite the factors in Laclede v. United States: the price of the merchandise compared to other home market sales, the profitability of the merchandise compared to other home market sales, the number of customers purchasing the product, quality assurances provided for the product, differences in how the product is sold, the end use of the product, the average size of the sale compared to other sales, and whether the product is distinguished by the seller from other merchandise of the same type. See Laclede Steel Co. v. United States, Slip Op. 95–144 (CIT August 11, 1995). Petitioners claim that many of these factors apply to this case. Petitioners

argue that the Department verified that certain products (such as flange material) are sold at a discount and are less profitable than prime products. Petitioners also state that these products are downgraded to more limited uses than originally intended when produced, and that they are sold as is without mill certificates. Unlike most products, according to petitioners, these products are inventoried and given a different designation, and these products are sold to a more limited group of customers.

Petitioners state that Iscor has configured its database in such a way that it has distorted product matching, calculation of difference-in-merchandise adjustments, and calculation of normal value. For these reasons, they claim that the final determination should be based on the facts available.

Respondent maintains that its home market database is usable and has been verified. Iscor notes that it has distinguished between prime and non-prime products. Iscor notes that it was instructed by the Department in its March 19, 1997, Supplemental Questionnaire to reclassify non-prime products to prime products if these products meet any specification (even if not the one originally intended). Iscor claims that it followed the Department's instructions and that it would be unjust to penalize Iscor for following these directions.

Iscor argues that its reclassified products are not sold outside the ordinary course of trade. Iscor states that in determining whether products are outside the ordinary course of trade the Department does not evaluate just one factor in isolation but all the circumstances particular to the sales in question. See Murata Mfg. Co. v. United States, 820 F. Supp. 603, 607 (CIT 1993) and Portland Cement and Clinker from Mexico, 62 FR 47626 (September 10, 1997). Iscor claims that its reclassified products are not sold for unusual reasons or under unusual circumstances, and urges the Department not to find these sales outside the ordinary course of trade.

DOC Position

We agree with respondent. At verification we found that Iscor produces and sells certain products as commercial quality products for general engineering applications where moderate bending, forming and drawing are involved. These products are not produced to specific mechanical property requirements and, as a result, they do not meet the same stringent specifications that may be characteristic of other Iscor products. Although Iscor's family of commercial products is sold to certain customers in the local market absent test certificates, this material is accompanied by analysis certificates which attest to its meeting certain chemical specifications.

During our review of Iscor's commercial quality products, we found that some of these products are comprised of steel which has been downgraded and reclassified during production from its originally intended specification. This material, like the commercial quality material intended as prime commercial quality material, meets the limited characteristics and specifications of Iscor's family of commercial quality products. We note that for purposes of a price-to-price comparison, the fact that some commercial quality material may originally not have been intended as commercial quality material is irrelevant. What is important is that the material sold and valued as commercial quality material meets the specifications for which it is valued and sold; and our analysis of sample sales at verification involving these products demonstrated that they conformed to the limited specifications and guidelines of commercial quality plate products. We acknowledge that the Department instructed Iscor to reclassify certain non-prime products classified as ''seconds'' as prime products if they met any specification (even if not the one originally intended).

Regarding petitioners' claim that Iscor's reclassified and downgraded products may be sold outside the ordinary course of trade, petitioners appear to be primarily concerned with flange material, the ''lowest of the low.'' We agree that several of the factors cited as criteria used in making such a determination with respect to sales outside the ordinary course of trade appear to apply in this case. For example, certain flange material is sold on a tender basis, and not per specific orders. As a result, these products may be sold at prices lower than other prime commercial grade steel products. The profitability of downgraded commercial material is also less than the profitability of as intended commercial grade material. There is limited information on the record with respect to the other criteria. However, we note that a very significant portion of the commercial grade home market sales that match to U.S. sales fail the cost test. Because the steel in question is the ''lowest of the low,'' these prices are presumably lower than those of as intended commercial quality steel. To the extent that certain sales in the relevant product control number are more properly designated as seconds than prime (and therefore should be in a separate control number and not matched to prime U.S. sales (see Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands, 62 FR 18476, 18482 (April 15, 1997)), we believe that these sales are most likely to be the ones that failed the cost test and are, therefore, already not being used in our matching analysis. Therefore, no further adjustment is required. See Analysis Memo, dated October 24, 1997.

Comment 8

According to petitioners, Iscor has improperly calculated its home market rebate adjustments. Petitioners note that two of the rebates, REBATE2H and REBATE6H, were allocated by calculating the total rebates paid on all direct and indirect sales and dividing that amount by the direct sales tonnage. This amount was allocated only to direct sales, which petitioners allege unfairly skews the price-to-price comparisons. Petitioners argue that the Department should not grant Iscor's reported REBATE2H or REBATE6H as adjustments to normal value; but for purposes of the cost/price test, the full rebates should be granted. Petitioners state that the amounts of two other rebates, REBATE3H and REBATE5H were skewed. Petitioners urge the Department to use facts available for this final determination, as the gross unit price net of rebates cannot be accurately determined for any sale receiving any of these rebates.

Iscor claims that it used a reasonable methodology in reporting rebates and that the Department verified these rebates. Iscor notes that customers were entitled to a rebate on both direct and indirect tonnage, that is irrespective of whether the material was bought directly from Iscor or through a merchant. Iscor argues that it correctly allocated the full rebate to direct sales because it was requested to state the rebates on a sales-specific basis and it only stated direct sales tonnage in Part B of its questionnaire response.

DOC Position

We agree, in part, with both petitioners and respondents. With respect to REBATE2H and REBATE6H, we agree with petitioners that the methodology employed by Iscor which calculates these rebates on the basis of both direct and indirect tons purchased (rather than on direct tons purchased) skews the treatment of these rebates. This methodology was not explained to the Department prior to verification. Indeed, Iscor's most detailed submission on this issue indicated that the rebates

were calculated using total customer tonnage (see response of June 27, 1997). Iscor's allocation methodology greatly overstates the rebate amounts for REBATE6H and REBATE2H for certain sales, and understates these amounts for other sales. Because these rebates are allocated across all direct sales to a particular customer, and customers may buy more than one type of steel, these distortions can significantly affect our analysis. We note, however, that Iscor's reported amounts for REBATE6H do not apply to home market sales that are matched to U.S. sales. Consequently, this portion of the comment is moot. Regarding REBATE2H, we are disallowing this rebate for the final determination with the exception noted below. For certain sales, we found at verification that essentially all sales were direct rather than a combination of direct and indirect. For these sales, we are continuing to use the reported rebate amount as an adjustment to normal value. (We note that certain sales for which this rebate was reported do not match to U.S. sales and although we are disallowing this rebate, for these sales this issue is moot.) With respect to REBATE3H and REBATE5H, the Department found at verification that Iscor's allocation methodology understated the actual amounts for the rebates had they been calculated on a transaction-specific basis. For the final determination, therefore, we are using the reported rebate amounts as adjustments to NV. See Analysis Memo, dated October 24, 1997.

Comment 9

Petitioners state that various errors in Iscor's U.S. sales database render it unreliable as a basis for the final determination. For example, petitioners identify certain discrepancies relating to ocean freight rates and early payment discounts. Petitioners argue that U.S. credit expenses were not verified as no documentation of payment dates was provided.

Iscor claims that the U.S. sales database has been verified. With respect to ocean freight, Iscor notes that the discrepancy arose because the reported amount was an estimate calculated prior to the actual shipment. Iscor states that the Department has the actual expense and that an estimated freight rate will always differ from the actual freight rate as estimated rates are negotiated prior to fixing sales price. With respect to early payment discounts, Iscor alleges that it employed a reasonable methodology.

DOC Position

We agree with petitioners in part. While the Department identified certain discrepancies relating to ocean freight rates, early payment discounts, and U.S. credit at verification, we disagree that these errors render Iscor's overall U.S. sales database unreliable. The Department considers these mistakes to have been relatively minor and not to call into question the integrity of the entire database. As a result, we are using Iscor's submitted data, with the revisions noted in these comments, and not using total facts available in this final determination.

With respect to ocean freight expenses reported by Iscor for certain sales, we found at verification that the reported amounts misstated the actual amounts for certain shipments. For the final determination, we have corrected ocean freight charges for these specific sales. For all other ocean freight expenses, where such charges are applicable, we are applying as facts available the highest reported amount for any U.S. sale. By not providing verifiable information for ocean freight expenses when such information was available to Iscor, we have determined that Iscor failed to cooperate by not acting to the best of its ability to comply with a request for information. See Certain Pasta From Turkey, 61 FR 30309, 30312 (June 14, 1996) (Pasta). Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. Additionally, we did not convert ocean freight from rand to dollars as we did in the preliminary determination, as this amount was in fact reported in dollars.

With respect to U.S. credit expenses, we were unable to verify date of payment, since Iscor did not provide documentation of proof of payment for its U.S. sales during verification. As facts available for U.S. credit expenses, we are applying the highest reported U.S. credit expense to all U.S. sales. By not providing verifiable information for U.S. date of payment when such information was available to Iscor, we have determined that Iscor failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

We are allowing Iscor's reported early payment discounts. Our review of Iscor's allocation methodology, which calculated a discount amount based on all early payment discounts and tons shipped to the customer was determined to be reasonable. The allocated amount reported is an average for all sales—including sales which received the discount and sales which did not receive the discount. Consequently, this amount will always differ from the discount amount specified by contract on individual sales, as the discount was not in fact paid on all sales. For the final determination we are continuing to use Iscor's reported U.S. early payment discount amounts.

Comment 10

Petitioners note that many U.S. sales were made on a theoretical weight basis and that because Iscor rolls larger than the nominal dimensions, customers who purchase on a theoretical weight basis actually receive more tons than ordered. Therefore, if the gross price is divided by the actual weight, it will result in a lower unit price than the theoretical weight based unit price. Petitioners argue that all price comparisons should be made on the same weight basis, and that all prices and expenses should be converted to actual weights. Respondent did not comment on this issue.

DOC Position

We agree with petitioners that all price comparisons should be made on the same weight basis. In its original and supplemental questionnaire responses, and as we found at verification, Iscor failed to report properly an actual to theoretical weight conversion factor for both its U.S. and home market sales, thereby prohibiting price comparisons to be made on the same weight basis. As facts available, we are applying the average of the verified U.S. ratio of theoretical to actual weights to all U.S. quantities and prices reported on an actual weight basis. We are applying the same conversion factor to CV. With respect to the home market, as facts available we are applying the verified ratio of theoretical to actual weights to all home market quantities and prices reported on an actual weight basis. We are applying this same conversion factor to the reported COP. See Analysis Memo, dated October 24, 1997. We are applying facts available to these adjustments under section 776(a)(2) because Iscor did not provide information requested by the Department in its submitted database.

Comment 11

According to petitioners, Iscor did not document its home market payment dates at verification. Therefore, they claim that the Department should not grant Iscor a downward adjustment to normal value for home market credit expenses due to the fact that the payment time could not be verified.

Iscor argues that the Department incorrectly rejected Iscor's proof of payment. Iscor notes that verification is a long process and it is often necessary

to work long hours to complete verification. Iscor explains that because the verification continued past normal business hours on the last day of verification it lost access to the office that had proof of payment records. Iscor states that it forwarded this information to the Department representatives after verification, but the Department rejected these records. Iscor urges the Department to consider proof of payment to be verified because it made a good faith effort to provide the information to the verification team.

In responding to petitioners, Iscor noted that its data system does not provide transaction specific payment dates because local sales are paid by statement, not by individual invoice. Iscor claims that it devised a reasonable methodology as the most accurate way to determine payment dates based on the information that it did have.

DOC Position

We agree with petitioners that we were unable to verify Iscor's home market payment dates. While Iscor may have devised a reasonable date of payment methodology, we were not able to verify this methodology on site. The Department appropriately rejected Iscor's post-verification date of payment submission as untimely. Date of payment information and source documentation was clearly requested in the Department's verification outline, which was provided to Iscor in advance of verification. This information should have been prepared in advance of the start of verification and should have been part of the sales trace packages at the time they were presented to the Department. After verification had ended, the verification team was not in a position to tie date of sale information to original company records or otherwise verify any information regarding payment date. Therefore, we are denying home market credit expenses as an adjustment to normal value.

Comment 12

According to petitioners, no offset to normal value for pre-sale warehousing should be granted as the Department was unable to verify pre-sale warehousing expenses. Respondent did not comment on this issue.

DOC Position

We disagree with petitioners. The Department is not required to verify every item in a respondent's questionnaire response. Rather, in conducting verification, the Department must prioritize its examination of a respondent's reported data according to factors such as time availability, a respondent's general level of compliance, and the relative dollar value of the reported amounts. ''[V]erfication is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe.'' Bomont Indus. v. United States, 733 F. Supp. 1507, 1508 (CIT 1990). In this case, time did not permit us to verify Iscor's reported pre-sale warehousing expenses. Because we have no evidence that would lead us to disregard respondent's reported pre-sale warehousing expenses, we are granting this adjustment for the final determination.

Comment 13

Petitioners argue that the scope of the investigation should be clarified to include: (a) purported ''alloy'' plate, sold as ASTM A36 or another carbon plate specification, to which trace amounts of inexpensive alloying agents have been added (''low-alloy plate'') and (b) subject merchandise sold as having a 3⁄16″ nominal thickness but ''rolled light'' to an actual thickness of just under 4.75mm (the boundary of the tariff classifications set forth in the scope description of the preliminary determination) (''light-rolled 3⁄16″ plate''). Petitioners state that the Department routinely makes minor changes to its scope descriptions, both during investigations and after an order is issued, particularly where this is thought necessary to prevent circumvention. See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, line and Pressure pipe from Italy, 60 FR 31981, 31983–85 (June 19, 1995) and Freshwater Crawfish Tail Meat from the People's Republic of China, 62 FR 41347, 41357–58 (August 1, 1997).

Petitioners claim that any argument that the International Trade Commission (ITC) preliminary determination precludes this scope clarification is based on a fundamental misunderstanding of the interrelationship between the scope of investigation, the industry examined by the ITC (defined as producers of the like product), and the requirement for industry support. Petitioners note that although the Department frequently modifies the scope of an investigation during its course, the Department is expressly prohibited by statute from reconsidering the issue of industry support. Petitioners claim that the Department has explicitly rejected the theory that the Department cannot include merchandise within the scope of an investigation unless precisely the same merchandise was include in the ITC's injury determination. See Hot-Rolled Lead and Bismiuth Carbon Steel Products from the United Kingdom and Germany, 62 FR 34213, 34215 (June 25, 1997) (initiation of anticircumvention inquiry). Petitioners add that none of the anticircumvention provisions require a new injury determination.

According to petitioners, they have demonstrated in their July 3, 1997, submission that, using the five factors traditionally employed by the Department to decide whether particular products are within the same class or kind covered by the order, low-alloy plate and light-rolled 3⁄16″ plate share the same general physical characteristics as other subject plate; that ultimate purchasers have the same expectations of low-alloy plate and light-rolled 3⁄16″ plate as of other subject plate; and that low-alloy plate and light-rolled 3⁄16″ plate are sold in the same channels of trade, for the same ultimate uses, and at the same cost, as other subject plate.

Petitioners assert that all 3⁄16″ nominal thickness plate is within the scope of the investigation regardless of whether its actual thickness is less than 4.75mm. They state that because 3⁄16″ plate is an important part of the market for thin gauge plates, the scope should be clarified to state that it covers plate 4.75mm in thickness or more in nominal or actual thickness. According to petitioners, any customer ordering a 3⁄16″ A36 plate, for example, would be willing to accept any thickness within the tolerance for that size plate. Thus, any plate within the tolerance for 4.75mm nominal thickness plate will compete directly with any other plate within the tolerance.

Petitioners argue that all cut-to-length plate that meets common non-alloy plate specifications is within the scope of the investigation, regardless of the presence of alloys in excess of those specified in the Harmonized Tariff Schedule of the United States (''HTSUS'') categories for non-alloy steel. They state that the addition of such alloys does not change the specification, grade, physical characteristics or applications of the plate. Petitioners believe the published description of the scope of the investigation should be amended to make clear that it covers all cut-to-length plate made to common non-alloy plate specifications. This includes, but is not limited to, ASTM A36, A572, A709, A588, A283, PVQ A516, A573, A455, and ABS grades, as well as chemical or proprietary equivalents to

those specifications, regardless of the alloy content or tariff classification.

Petitioners allege that certain producers in the countries subject to these investigations on cut-to-length carbon steel plate have begun to vary the alloy content slightly so that these products no longer meet the tariff definition of non-alloy steel. In particular, petitioners believe that certain producers may be adding boron to their chemistries, because boron is relatively inexpensive. Petitioners believe such products are being used in identical applications as other subject merchandise. In petitioners' view, in any instance where the added alloy does not change the performance characteristics of the plate or affect the product's classification within the industry specification the product should remain within the scope of the investigation.

Iscor urges the Department to reject petitioners' scope clarification because this is not a routine minor change nor have petitioners submitted any information on the record that Iscor or any other South African producer is circumventing or trying to circumvent the preliminary determination in this investigation.

DOC Position

We disagree with petitioners. See memorandum on Scope of Investigations on Carbon Steel Plate, Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Comment 14

Iscor and Highveld urge the Department to correct its exchange rate methodology.

Highveld argues that the Department should use without exception the actual daily exchange rate certified by the Federal Reserve Bank of New York to convert the South African currency into U.S. dollars instead of a benchmark rate. According to Highveld, both the law and Department practice direct the Department to use actual unadjusted daily exchange rates. See Section 773A(a) of the Act and the Statement of Administrative Action, H.R. Doc. No. 103–316, at 841–842 (1994). See also Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067, 69071 (December 31, 1996). Highveld notes that Certain Welded Carbon Steel Pipe and Tube from Turkey states that the actual daily exchange rates were used rather than the benchmark rate because the foreign currency depreciated substantially against the U.S. dollar of the period of review. Highveld also claims that the Department is reviewing the application of the benchmark in situations where the foreign currency depreciates substantially against the U.S. dollar over the period of investigation or review, situations in which it may be appropriate to use daily rates. See Department of Commerce Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, 61 FR 9434, 9435 n.2 (March 8, 1996). Highveld claims that the South African currency steadily and substantially depreciated against the U.S. dollar during the period of investigation. It cites the sales verification report where verifiers noted a ''sharp devaluation during the POI.''

Highveld also states that there need not be a determination of significant inflation or hyperinflation. Highveld cites Certain Welded Carbon Steel Pipe and Tube from Turkey and states that Department practice does not require a claim of significant inflation in order to use daily exchange rates and that daily exchange rates may be used on two separate occasions: (a) if the foreign currency has undergone a substantial depreciation against the dollar or (b) if domestic price inflation is significant. Highveld claims that the first scenario occurred for this case and urges the Department to use daily exchange rates.

Iscor argues that the Department incorrectly used a benchmark rate to convert South African rand into U.S. dollars instead of the daily rate on certain days of the POI because of currency fluctuations. Iscor maintains that the use of the benchmark rate is contrary to section 773A(a) of the law and Commerce practice (Certain Welded Carbon Steel Pipe and Tube from Turkey). Iscor takes issue with the Department's statement in the preliminary determination regarding the decline in the South African rand. Iscor argues that it is not a requirement in the law, regulations or Policy Bulletin (see above) that South Africa be a high-inflation economy in order not to use a benchmark. Like Highveld, Iscor urges the Department to correct its exchange rate methodology in the final determination and use the actual unadjusted daily exchange rates instead of the benchmark rates for all dates.

Petitioners argue that the currency conversion methodology used in the preliminary determination was correct. In petitioners' view, the Department's methodology was both lawful and consistent with past practice. Petitioners cite section 773A of the Act and the SAA as stating that in converting foreign currencies into U.S. dollars fluctuations in exchange rates shall be ignored. Petitioners argue that the Department's preliminary determination in this case is entirely consistent with the Policy Bulletin on Currency Conversions. (See Department of Commerce Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, 61 FR 9434, 9435 n.2 (March 8, 1996).)

Petitioners explain that the reason the methodology used in the preliminary determination differs from that in Certain Welded Carbon Steel Pipe and Tube from Turkey is that the Turkish case involved a hyperinflationary economy in which the currency was undergoing a dramatic depreciation. Petitioners state that this case does not involve dramatic currency depreciation driven by hyperinflation, and cite the Department's finding in the preliminary determination that the decline in the rand was not so precipitous and large as to reasonably preclude the occurrence of fluctuations. Petitioners argue that Highveld's statements that the rand underwent a sharp devaluation quoted in the verification report is not evidence of a precipitous and large depreciation in the rand and the fact that the benchmark was used only for certain days also argues against the existence of a precipitous and large depreciation in the rand.

DOC Position

We agree with petitioners. This case is distinguished from Certain Welded Carbon Steel Pipe and Tube from Turkey as that case involved a hyperinflationary economy in which the currency was undergoing a dramatic depreciation. There is no evidence in the present case of either a precipitous and large depreciation in the rand relative to the dollar or of hyperinflation in the South African market. As petitioners correctly note, section 773A of the Act and the SAA both state that in converting foreign currencies into U.S. dollars fluctuations in exchange rates shall be ignored. The Department's use of benchmark exchange rates in place of daily exchange rates in instances when a foreign currency is considered fluctuating is consistent with these statutory requirements. We are continuing to use benchmark rates in place of daily exchange rates in instances when a foreign currency is considered fluctuating for the final determination. For further discussion of this issue, see the ''Currency Conversion'' section of this notice.

Comment 15

Petitioners argue that Highveld's per-unit COP data do not properly account for differences in physical characteristics. Petitioners further contend that Highveld's methodology

ignores cost differences due to differences in each product's processing time per ton. Petitioners support these arguments by citing that (1) Highveld allocated the same per-ton conversion costs to slabs, billets, and blooms although they have different production processes, and (2) Highveld allocated conversion costs for the flat-products plant based on the tonnage of slab inputs compared to the tonnage of slab inputs used for other non-subject products produced in the plant. The petitioners reason that all products produced by the flat products plant require different machine times per ton and, therefore, should have different per-unit conversion costs according to their thickness, width, length, and other extras. Petitioners argue that Highveld should have at least allocated the conversion costs for as-rolled products over the output of finished products instead of over the input.

Highveld asserts that it properly adjusted its normal accounting records, which calculates a single cost for all products, in order to capture the cost differences due to the physical characteristics on which the Department based its analysis. Highveld notes that it adjusted costs for differences in chemical components, additional labor and overhead costs associated with normalizing, and labor and variable overhead costs based on yield factors to account for different rolling costs for different dimensions of merchandise.

DOC Position

We agree with the petitioners in part that Highveld's reporting methodology failed to fully account for cost differences associated with differences in certain physical characteristics of the subject merchandise. Highveld's reported COP and CV data does account for (1) chemical input differences for differing quality and types of steel produced, (2) the additional costs related to producing normalized products, and (3) yield loss differences between differing dimensions of merchandise. Highveld's reported cost data, however, failed to account for cost differences associated with processing time differences between varying dimensions of finished product. Our verification of Highveld's reported cost data showed that the variable cost of manufacturing the subject merchandise differs depending on the dimensions of the product produced. We therefore adjusted Highveld's reported costs to reflect these dimensional cost differences.

Comment 16

Highveld claims that, in its cost verification report, the Department miscalculates the difference between the COM in Highveld's accounting system and the COM submitted by the company. Highveld agrees with two of the adjustments to the reconciliation identified by the Department in its cost verification report. Highveld objects, however, to the Department's proposed adjustment to value the cost of the October 1995 to December 1995 sales from 1995 standard per-unit costs to 1996 standard per-unit costs. Highveld contends that the Department should use the average of the per-unit costs reported to the Department in its Section D response, which results in an insignificant difference between the COM submitted to the Department and the COM in Highveld's accounting system. Highveld maintains that its reconciliation of submitted COM to that contained in its cost accounting system shows only a small difference. Any adjustment to the submitted costs for such a small difference, according to Highveld, is completely unjustifiable.

The petitioners urge the Department to base Highveld's COM on total facts available because Highveld was unable to reconcile its reported COM with its cost accounting system. If the Department does not base the final determination on total facts available, petitioners contend that the Department should at least adjust COM by the overall difference between Highveld's reported COM and its cost accounting system. The petitioners contend that the flaws in Highveld's submitted COM reconciliation identified by the Department should be accounted for when comparing the total submitted COM with that contained in Highveld's cost accounting system for the same time period. In particular, the petitioners claim that Highveld incorrectly valued the cost of its 1995 sales using 1995 standard costs rather than 1996 standard costs which were the basis of its cost response.

DOC Position

We agree with Highveld that the cost verification report miscalculated the difference between its submitted COM and that recorded in its accounting system. We reviewed the revised reconciliation calculation as contained in the cost verification report and noted that G&A was erroneously computed. In the normal course of business, Highveld allocates G&A expenses to its steel making cost centers, including these expenses as a cost of manufacturing, and ultimately in the cost of sales for financial statement purposes. Because Highveld's total COM per its accounting records included G&A expenses while the submitted COM did not, we need to adjust the submitted COM for the total amount of G&A expenses reported to the Department for subject merchandise. In addition, since Highveld's response is based on its actual cost of manufacturing during 1996 and not its 1996 standard cost of manufacturing, we agree with Highveld that the October through December 1995 sales should be valued based on the average cost of manufacturing as contained in its response for purposes of the cost reconciliation. We are satisfied that the reconciliation provided by Highveld in its September 15, 1997, case brief establishes that the reported costs reasonably agree with Highveld's accounting records. Therefore, we did not adjust Highveld's submitted costs for this difference.

Comment 17

Petitioners contend that the Department should increase Highveld's COP because Highveld did not include in the submitted costs the full G&A and interest expense on materials purchased from other divisions within Highveld.

Highveld argues that G&A and interest for materials transferred from other divisions are already included in the calculation of G&A and interest for the subject merchandise. Highveld reasons that if the Department were to include these costs as a part of material costs, it would be double counting G&A and interest.

DOC Position

We agree with Highveld. The Department normally treats the cost of inputs obtained from other divisions within the same company as a cost incurred by that company (i.e., it is not an input obtained from an affiliate, it is an input produced by the respondent). In this instance we use the cost incurred by the company to produce the input. See e.g., Final Results of Antidumping Duty Administration Review: Certain Forged Steel Crankshafts from the United Kingdom, 61 FR 54613, 54614 (October 21, 1996) (''Crankshafts''). We state in Crankshafts that although respondent describes companies as ''related'' in various sections of their questionnaire response, the weight of record evidence (e.g., corporate structure charts and audited financial statements) indicate that they are divisions of the same corporation. Thus, in Crankshafts the Department used the division's actual verified cost of producing the input.

Highveld's record evidence indicates that the inputs it identified as obtained from ''related'' parties were obtained from other divisions within the company. While the Department's normal practice is to value inputs from divisions at actual cost, Highveld elected to value these inputs at its transfer prices for submission purposes. Our verification of Highveld's reported cost data showed that the transfer prices for these inputs were higher than the COM. Since the transfer price was higher than the cost of manufacturing each input, Highveld did not understate input costs in its reported COP and CV data. We, therefore, agree with Highveld that to include G&A and interest as part of material costs would lead to double counting of G&A and interest.

Comment 18

Petitioners claim that Highveld improperly allocated labor costs between fixed and variable production costs by treating virtually all labor costs as fixed. Petitioners allege that Highveld's allocation of variable and fixed costs distorts the Department's difference-in-merchandise comparison and product-matching.

Highveld maintains that it properly reported total direct labor for the subject merchandise and that variable labor costs are not under-reported for the Department's differences-in-merchandise adjustment.

DOC Position

We agree with Highveld that it properly allocated labor costs between variable and fixed costs using percentages based on the historical experience of its plant management. Because Highveld reported in its Section D response both variable and fixed per-unit labor costs as direct labor, we reclassified Highveld's reported fixed labor costs as fixed overhead costs to compute the difference-in-merchandise adjustment.

Comment 19

Petitioners recommend that, if accepted, Highveld's Section D costs be used as the basis for difference-in-merchandise adjustments and product matching.

Highveld agrees that its Section D costs should be used to calculate the differences-in-merchandise adjustment.

DOC Position

We agree with both petitioners and Highveld. The Department used Highveld's Section D costs to calculate the differences-in-merchandise adjustments for the final determination.

Comment 20

Petitioners note that Highveld incorrectly calculated G&A expenses by using different divisional levels in the numerator and denominator for the calculation. Petitioners suggest that the Department apply the recalculated G&A expenses to Highveld's COP and CV.

Highveld agrees that the G&A expense rate recalculated at verification should be used for the final determination.

DOC Position

We agree with both petitioners and Highveld. The Department used Highveld's recalculated G&A expense to calculate COP and CV for the final determination.

Comment 21

Highveld maintains that it received net interest income and that it incurred no interest expense associated with the production of the subject merchandise. Therefore, Highveld contends that COP and CV interest expense should be zero. Highveld argues that the Department's consolidated interest expense calculation should exclude the entire amount of interest expense associated with Columbus Joint Venture, an entity in which Highveld has only a 33 percent equity interest. Highveld contends that having a 33 percent equity interest fails to meet the requirements for consolidation. Highveld cites Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18445 (April 15, 1997) and Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, 57 FR 21065, 21069 (May 18, 1992), to support its position that the Department should exclude the Columbus Joint Venture from Highveld's consolidated interest expense computation since there is no parent-subsidiary corporate relationship or parental control between these two companies. To support its claim, Highveld notes that the Department did not consolidate a joint venture in which the respondent had 50 percent equity ownership in Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23688 (May 6, 1994), because the Department determined that parental control did not exist. Highveld notes that it is not a parent to Columbus Joint Venture and it does not exercise parental control.

Petitioners assert that Highveld's corporate consolidated financial expenses must be used to calculate interest expense for COP and CV. Petitioners state that the cases cited by Highveld show that the Department calculates a consolidated interest factor where the parent exercises control over the subsidiary. Since Highveld Steel Works is controlled by the corporate parent, Highveld Steel and Vanadium Corporation Limited, the use of the consolidated interest expense rate is appropriate. Petitioners further argue that since Highveld includes interest expenses for the Columbus Joint Venture in its consolidated corporate financial statement and that the statute at 19 U.S.C. 1677b(f)(1)(A) provides that costs shall normally be calculated based on the exporter's or producer's records if they are kept in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country, the Department should include all interest expenses consolidated by Highveld in its financial statement in calculating a corporate interest expense rate.

DOC Position

We agree with petitioners. The Department normally calculates interest expense based on the respondent's audited consolidated financial statements for the year that most closely corresponds to the POI. Highveld consolidated the financial results of the Columbus Joint Venture in its 1996 annual audited financial statements. Since Highveld's audited financial statements were found to be fairly presented and in conformity with the GAAP of South Africa, we have no reason to believe that the financial results for the Columbus Joint Venture should not have been included in the consolidated financial statements for Highveld.

We disagree with Highveld that the cases it cited support its argument. In Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18445 (April 15, 1997), there were several companies which met the requirements for consolidation but because Korean GAAP did not require companies to prepare consolidated financial statements, no audited consolidation was prepared. We therefore combined the separate audited financial statements of the companies to calculate a group-level interest expense factor. In Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23688 (May 6, 1994) and in Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel

Butt-Weld Pipe Fittings from Thailand, 57 FR 21065, 21069 (May 18, 1992), the respondents were not included in the audited consolidated financial statements of the parent because they did not meet the consolidation requirements of their home country GAAP. In this case, however, the Columbus Joint Venture is included in the audited consolidated financial statements of Highveld, in accordance with its home country GAAP. Therefore, none of these circumstances apply to Highveld, as Highveld included Columbus Joint Venture in its consolidated financial statements.

Comment 22

Petitioners argue that the final determination for Highveld should be based on total facts available. Petitioners state that it has documented in previous comments that Highveld's cost and price responses are completely unreliable and unusable in their present form. Petitioners note that the number of changes that the Department would need to make to use Highveld's sales data are substantial, to the extent the data is usable at all. Petitioners argue that Highveld's COP and CV data are completely unusable (see comments above). In petitioners' view, as the cost data are unusable, it is impossible to perform the below-cost sales analysis, use the CV data, or calculate difference in merchandise adjustments. Indeed, petitioners claim that Highveld's entire submission is unreliable and unverified and that the Department should base the final determination on facts available. As facts available, petitioners propose that the Department use the higher of the highest rate alleged in the petition or the highest rate found for another producer.

Highveld argues that the final determination should be based on its submitted data, not facts available. Highveld acknowledges that the Department found several errors in its reported information, but claims that this data was substantially verified and that any errors were invariably minor and not sufficient for the Department to resort to facts available. See Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan, 62 FR 2648, 2650 (January 17, 1997) and Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review, 61 FR 13834 (March 28, 1996). To the extent the Department finds errors or gaps in Highveld's information, respondent argues, it should revise the data using non-adverse facts available.

Highveld also objects to petitioners' claim that the Department should draw adverse inferences. In Highveld's view, the minor errors that were found are not sufficient to cause the Department to resort to adverse inferences. Highveld states that it did not fail to submit a questionnaire response, provide a response which was wholly unverifiable, or refuse to provide information to the Department. See Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38167 (July 23, 1996); Antifriction Bearings, 61 FR 35713, 35715–6 (June 8, 1996); Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 30309, 30312 (June 14, 1996). Highveld also cites other cases in which the Department did not apply adverse inferences, and states that in comparison with these cases, the application of adverse inferences is not appropriate in this case. See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271 (May 14, 1996) (Circular Welded Non-Alloy Steel Pipe From South Africa).

Highveld claims that the information it presented is not completely unreliable as suggested by petitioners, and the Department should not use total facts available or use adverse inferences in its final determination.

Petitioners counter that due to time and resource constraints, verification cannot be more than a spot-check of information provided by respondent. In petitioners' view, the sheer volume and pervasiveness of the errors discovered during verification call into question the accuracy and complement of the whole response. See Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271, 24274. Petitioners note that the statute allows the Department to use adverse facts available whenever an interested party has failed to cooperate by not acting to the best of its ability. Petitioners claim that the extensive pattern of inaccuracies and omissions is evidence of Highveld's failure to cooperate. Petitioners argue that given the extensive deficiencies found with respect to nearly every major cost and price adjustment, the Department should assign Highveld an adverse facts available margin based on the highest margin found for another producer or the highest rate in the petition.

DOC Position

We agree with respondent that the final determination in this investigation should not be based on total facts available. While the Department agrees with petitioners that there are errors and omissions in Highveld's responses, we do not believe that the scope and impact of the errors in question are sufficient to warrant the application of facts available in the case as a whole. See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 37014, 37015 (July 10, 1997). We note that the magnitude of the errors in this investigation are substantially less than those noted in Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271, 24272–3 (May 14, 1996). With appropriate corrections, the Department has determined that Highveld's responses are usable for purposes for the purpose of margin calculations. Pursuant to sections 776 and 782(e) of the Act, the Department has used the facts otherwise available when necessary.

Comment 23

Highveld argues that the Department incorrectly determined there to be one level of trade in the preliminary determination. Highveld claims that sales in the home market and sales in the U.S. are at different levels of trade and that the Department should grant it a CEP offset. Highveld does not contest the Department's determination that there was only a single level of trade in the home market, but does disagree with the Department's finding that home market and U.S. sales are at the same level of trade.

Highveld notes that the Department determines normal value for sales at the same level of trade as the U.S. sales and that the starting price for CEP is the first sale to an unaffiliated buyer from which profit and expenses are deducted under section 772(d) of the Act. Highveld cites the preliminary determination which states that this deduction ''will normally yield a different level of trade for the CEP than for the later resale which is used for the starting price.'' Highveld states that to determine whether sales are at different levels of trade, the Department considers the stage in the marketing process, taking into account the class of customer, selling functions and expenses associated with these functions. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2107 (January 15, 1997) (Antifriction Bearings).) Highveld then cites the statute at 19 U.S.C.

1677b(a)(7)(A), which provides for a CEP offset if there is a difference in level of trade between CEP versus EP, but the data available do not provide an appropriate basis to determine a level of trade adjustment.

Highveld argues that record information demonstrates Highveld's home market sales are at a different, more remote, level of trade than its U.S. sales. Highveld claims its home market and U.S. sales are to a different class of customer and that the selling functions performed are qualitatively and quantitatively different (see Highveld's sales verification report, at pages 13, 23–25).

Highveld posits the existence of four marketing stages for the subject merchandise: (1) Production; (2) Sale to Distributor; (3) Sale to Steel Service Center (SSC); and, (4) Sale to End-User. Highveld claims that its home market sales are at stage 3—to SCCs. Highveld states that its U.S. CEP sales to Newco are at stage 2—to distributors. Highveld argues that since the selling functions of the U.S. importer (Newco) are accounted for by a deduction under provision of the law, they cannot be included in the level of trade analysis. (See 62 FR 27295, 27370 (May 19, 1997) and Antifriction Bearings.)

Highveld alleges that it has an additional layer of selling activity in the home market which is qualitatively and quantitatively different and amounts to a different selling function. Highveld claims that in the home market, it performs the following sales activities—rolling planning, order status feedback, pricing support, extensive post-sale service, market research, technical advice, advertising, freight and delivery arrangements, quality control, quality assurance, organizations and memberships and customer relations. Highveld states that in the U.S. sales functions are limited to moderate post-sales service, market discussions and meetings, freight and delivery arrangement, quality control and quality assurance. Highveld cites the Preliminary Results, 62 FR at 31965–31966 where the Department notes several differences in selling functions for U.S. and home market sales. Highveld cites the Department's Final Rules, 62 FR 27295, 27371, where it states, ''[S]ubstantial differences in the amount of selling expenses associated with two groups of sales also demonstrates that the two groups are at different levels of trade.''

Highveld states that since the Department cannot quantify whether Highveld's different levels of trade affect price comparability, the Department should grant Highveld a CEP offset.

Petitioners support the Department's determination in the preliminary determination that a single level trade exists in both the home market and the U.S. market, and urges the Department to reach the same conclusion for the final determination. Petitioners state that neither difference in selling functions or customer descriptions are alone sufficient to establish different levels of trade. See Certain Welded Steel Pipe and Tube from Turkey, 61 FR 69067, 69068. Petitioners claim that the record in this review does not contain sufficient evidence of differentiated selling functions to justify more than one level of trade. Petitioners point to Highveld's sales verification report, at page 23, where the verifiers stated that selling functions were handled the same by Highveld, regardless of their classification and that Highveld differentiated selling functions based on the quantity of the sale rather than the level of trade. Petitioners claim that market research, technical advice, product development research, freight and delivery, quality assurance programs, and production planning were all performed in both markets. Petitioners noted that the only selling function that appeared to be different was personnel training, but that verifiers found this function to be very limited in scope (see Highveld's sales verification report). Petitioners acknowledge other small differences (i.e., just-in-time delivery and advertising) (Preliminary Results at 62 FR 31966). Petitioners state that none of these differences are sufficient enough to justify differing levels of trade, and that the Department should not grant a CEP offset.

In response to petitioners' comments Highveld continues to maintain that its home market sales are at a different, more remote level of trade from its U.S. sales, and that the Department should grant a CEP offset. Highveld claims that petitioners do not dispute the fact that its home market and U.S. sales are at a different stage of the marketing process. Highveld disputes petitioners' claim that selling functions are the same in both markets.

Highveld notes that market research is focused primarily on the home market, and that any comparable functions performed by Newco would be excluded from the level of trade analysis. With respect to technical advice and product development research, Highveld claims that there are qualitative and quantitative differences in the advice provided. Highveld states that U.S. production planning involves shipments planned well in advance, whereas home market planning entails more short-term demands and requests. Highveld notes petitioners' acknowledgment of differences between personnel training, and states that this difference should not be ignored because it is limited in scope. Highveld reiterates the additional differences in selling functions cited in the preliminary determination, and again asks the Department to grant it a CEP offset.

Petitioners counter that Highveld's U.S. and home market sales are at the same level of trade and no CEP offset is warranted. Petitioners dispute Highveld's claim that its home market sales are more remote than its U.S. sales. Petitioners note that steel service centers and distributors are not necessarily at different stages in the marketing process. Petitioners state that service centers are often themselves distributors and that no recorded evidence indicates a clear distinction between service centers and other distributors. According to petitioners, both distributors and service centers may sell to other distributors and service centers or directly to end-users.

Petitioners claim that many of Highveld's home market selling activities do not appear to be tangible. Petitioners note that Highveld must do rolling planning on all sales, in order to maximize the efficient use of its mill. Petitioners state that there is no record evidence that just-in-time delivery plays any significant role in Highveld's sales as it generally produces all sales to order. Petitioners note that pricing supports are simply discounts and rebates which are already taken into account in the Department's analysis, along with warranty expenses. Petitioners argue that the record does not demonstrate that customer care visits, market share research or liaison meetings result in any significant costs or effort on Highveld's part. Petitioners note that Highveld acknowledges that it has after-sales service, freight and delivery arrangements, market discussion and liaison meetings, and quality control and assurance for sales in both markets. In petitioners view, there is not a quantitative or qualitative difference in the selling functions performed in the two markets and no CEP offset should be granted.

DOC Position

We agree in part with petitioners and with Highveld. In determining whether separate levels of trade actually existed between the U.S. and home markets, we examined Highveld's marketing stages, reviewing the chains of distribution and customer categories reported in the home market and in the United States. Highveld argues that its sales in the

home market are more remote and at a different stage of the marketing process from its sales in the United States. While we agree with petitioners that Highveld's distinction between SSCs and distributors is questionable, we do agree with Highveld that after Newco's selling functions are accounted for by a deduction under section 772 (d) of the Act, they cannot be included in the level of trade analysis.

With respect to the selling activities described by Highveld as representative of the greater quantitative and qualitative selling functions associated with home market sales compared to U.S. sales, many home market selling functions, although greater in number, appear to be activities similar in nature to the selling functions associated with U.S. sales. In addition, some of the home market selling functions detailed by Highveld do not characterize services provided to customers.

In some instances the activities characterized by Highveld as selling functions are more appropriately characterized as activities and functions associated with production and manufacturing processes. Rolling planning, for example, is something Highveld conducts in order to maintain efficiency during production, and it is required for products sold in all markets. Nor do we consider order status feedback and the conveyance to customers of the progress of particular orders to be a selling function. In any case, these services are provided to customers in both markets.

With respect to pricing supports, such as discounts and rebates, these are already accounted for in the calculation of NV, and we do not consider them to be distinct selling functions which are relevant to our level of trade analysis. Neither do various home market organizations and memberships to which Highveld belongs and makes contributions and payments to relate to services provided to customers *per se*.

A number of other selling functions are provided to customers in both markets. These include efforts to meet customer delivery schedules, freight arrangement and delivery services, and quality assurance and control (including line inspection and material testing and certification). Highveld performs functions relating to market discussions and research, and customer liaison meetings in both markets. Although Highveld officials have less opportunity to physically meet with U.S. customers than with those in the home market, they nonetheless do so regularly during each year. While Newco is responsible for conducting initial U.S. market research concerning market conditions in preparation for visits from Highveld officials, joint customer calls made by Highveld and Newco officials evaluate further these conditions and findings.

We agree with petitioners that because most of Highveld's sales involve merchandise produced to order and not sold from inventory, just-in-time delivery is not a significant selling function attributable to sales in one market versus another. Regarding technical advise, although Newco is responsible for providing initial support to U.S. customers, Highveld provides any necessary back-up, if requested.

We do acknowledge that there are some minimal differences in selling functions between the two markets. These differences have not changed from the ones noted in our preliminary determination, although as petitioners note these services appear to be relatively minimal and in our judgment are not sufficient to warrant a difference in LOT. For this final determination, we are finding that Highveld has a single level of trade in both markets. Accordingly, we have not granted Highveld a CEP offset for this final determination.

Comment 24

Highveld argues that the Department inappropriately matched U.S. specification A 515/516 Grade 70 to a less similar home market product. Highveld notes the Department's model matching program did not match the U.S. product with the home market product deemed by Highveld to be the closest match (SABS 1431 300WA). Highveld states that even though the SABS 1431 300WA is the best match with the U.S. model, in terms of physical properties such as mechanical properties and chemical composition, the model match program automatically discounted that model because it is classified as structural quality. Instead, according to Highveld, the Department's model match scenario chose a home market specification of BS 1501 151 430A as a best match because this specification is classified as the same pressure vessel quality as the U.S. model. Highveld cites the Sales Verification Exhibit 9 where evidence is submitted that states that 300WA and A515/516 tend to be higher strength with regard to ultimate tensile strength and yield strength. Highveld claims that the 430A is a much softer steel than the U.S. model; that 300WA and A515/516 may be rolled from the same plate but 430A may not; and that the mechanical and chemical similarities between the 300WA and the A515/516 translate into cost and value similarities. Highveld states that since the 430A requires a different chemical composition and mechanical properties, it requires different costs of production. In conclusion, Highveld reiterates that the better model match is U.S. model A515/516 to the home market model 300WA. Petitioners did not comment on this issue.

DOC Position

We disagree with respondents. In the ''Fair Value Comparisons'' section of this notice we note that when making product comparisons the Department uses the following criteria listed in order of preference: paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. Based on the Department's model matching hierarchy, products of the same quality will be matched to one another before being matched on the basis of similar product specifications. Consequently, this comment is moot, as changing the plate specification weighting as advocated by respondents will not effect the results of the Department's model match program.

Comment 25

With regard to U.S. warranty expense, Highveld urges the Department to utilize the more precise percentage calculated during the Sales Verification at Newco. According to respondent, at the start of verification, Highveld presented a percentage that it had calculated as the cost of ''returns'' (the cost to Newco of remedying defective merchandise, similar to warranty claims). However, Highveld observes that verifiers decided that this calculation was not specific enough and spent considerable time and effort to recalculate a more specific percentage (see Highveld's sales verification report, at page 59). It is this more specific rate that Highveld asks the Department to use to calculate the U.S. warranty expense for the final determination.

Petitioners state that previously unreported returns of merchandise should be deducted from CEP as a warranty expense. Petitioners separately argue that another previously unreported warranty expense should be subtracted from CEP.

In response to petitioners' comments, Highveld reiterates that the more precise warranty allocation calculated at verification should be used in the final determination.

DOC Position

We disagree with respondents. Although Highveld provided documentation at verification which it indicated was a more precise

determination of U.S. warranty expenses (see Highveld's sales verification report, at pages 58–59), the Department also found certain unreported claims and credits relating to sales of subject merchandise. Because we are not confident that the amount Highveld contends is the more precise amount includes all claims which should have been reported to the Department as U.S. warranty expenses, we are continuing to use the percentage presented to us at the start of verification as the cost of ''returns'' for this expense in the final determination. (See Analysis Memo, dated October 24, 1997.)

Comment 26

Petitioners note that the Department found unreported port of entry and exit survey charges at the U.S. verification of Newco. Petitioners state that these charges are paid by Newco and passed on to the customers and they should be deducted from U.S. price as a direct selling expense. Petitioners argue that since these charges have not been included in the computer sales listing, the Department should apply facts available to this adjustment. See 19 U.S.C. 1677e and 1677m. Petitioners argue that the Department should use the highest survey rates found for any sale as identified in the Highveld's sales verification report.

Highveld notes that it has submitted a revised database including these charges and that these charges apply to CEP sales. Highveld states that these charges do not apply to EP sales. Highveld argues that the Department requested this data and the use of facts available for these charges is not appropriate.

DOC Position

We agree with respondent. It is true that the Department found unreported port of entry and exit survey charges at the U.S. verification of Newco. These charges are paid by Newco and passed on to the customers and they should be deducted from U.S. price as a direct selling expense. These charges have been included in Highveld's latest submission and we have used Highveld's submitted port of exit and entry survey charges for the final determination.

Comment 27

Petitioners claim that Highveld failed to report stevedoring and wharfage charges in its sales listing, but reported them separately. Petitioners argue that these fees must be subtracted from the CEP for the final determination, taking into account the fees that were verified (see Highveld's sales verification report).

Highveld states that it has included this information in its revised database, and that these charges should be deducted from CEP.

DOC Position

We agree with both parties and have made this change for the final determination.

Comment 28

Petitioners state that Highveld failed to report certain U.S. sales of subject merchandise (see Highveld's sales verification report, at page 31). Petitioners note that the Court of International Trade has found that the ''capture of all U.S. sales at their actual prices is at the heart of the Department's investigation,'' and that the omission of even one U.S. sales is a ''serious error.'' See Florex v. United States, 705 F. Supp. 582, 588 (CIT 1988) and Persico Pizzamiglio v. United States, 16 CIT 299 (1994). Petitioners state that these missing sales must be included in the final determination, and that if the Department does not have detailed sales data for these missing sales on the record, it must resort to facts available.

Highveld notes that there was no significant failure to report U.S. sales. Highveld states that Newco manually identified sales of subject merchandise and missed several small sales. Highveld argues that this error is minor (less than one percent of Highveld's U.S. sales) and will not distort the antidumping calculation. Highveld further argues that with one minor exception these sales are the same merchandise at the same prices as other sales analyzed by the Department and urges the Department to exclude these sales from its antidumping analysis.

DOC Position

We agree with petitioners and have included these unreported sales in our analysis for the final determination. As the Department does not have detailed, verified sales data for these missing sales on the record, it is using facts available for this portion of the final determination. We fully agree with the finding of the Court of International Trade that the ''capture of all U.S. sales at their actual prices is at the heart of the Department's investigation.'' See Florex v. United States, 705 F. Supp. 582, 588 (CIT 1988) and Persico Pizzamiglio v. United States, 16 CIT 299 (1994). It is essential that respondents fully report this information to the Department. By not providing complete information for U.S. sales when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. As adverse facts available, we are using the highest calculated non-aberational margin for individual sales of respondent in this investigation. See Analysis Memo, dated October 24, 1997.

Comment 29

Petitioners state that marine insurance on U.S. sales was incorrectly reported (see Highveld's sales verification report, at page 38). Petitioners claim that since it is not possible to understand whether this miscalculation occurred in all sales or just those verified, the Department should increase all reported marine insurance by the percentage verified as facts available.

Highveld counters that the deduction for marine insurance should not be based on facts available as the Department only found that the reported amount of marine insurance for one shipment had been under-reported by a very small amount and marine insurance was correctly reported for other transactions. Highveld states that the Department should add the corrected amount (38 cents) to marine insurance for all invoices affected by the one misreported shipment, but otherwise use Highveld's reported data.

DOC Position

We agree with Highveld and have made this correction for our final determination.

Comment 30

Petitioners claim that Highveld did not correctly report the merchandise processing fee portion of U.S. import duties. They state that the processing fees should be changed to the correct amount as verified, and the corrected USDTYU factors of 5.7359 percent and 5.135 percent should be applied to 1995 and 1996 sales respectively.

Highveld agrees that the Department should correct this error. However, Highveld states that the correct factor for 1995 is 5.735 percent.

DOC Position

We agree with both parties and have included the corrected U.S. duty amounts submitted by Highveld in its revised sales listing for the final determination.

Comment 31

Petitioners claim that the interest rate used to calculate credit expense on CEP sales through Newco is incorrect.

Petitioners state that Newco used a simple average of the applicable interest rates rather than a weighted average interest rate, and used initial rates of interest for a particular loan, regardless of whether or not the rates fluctuated (see Highveld's sales verification report, at pages 38–40). For these reasons, petitioners believe that the Department should use the highest rate reported for any loan as the interest rate applied to the credit expense calculation for all CEP sales.

Highveld claims that the Department exhaustively verified the interest rate used to calculate CEP interest expenses. While Highveld continues to argue that its methodology is reasonable, it notes that based on information on the record, the Department could construct a weighted average interest rate.

DOC Position

We agree with petitioners. The methodology used by respondent does not accurately reflect Newco's cost of borrowing. Nor does the Department have complete documentation on all interest rates where these rates fluctuated. Even if the Department did have complete information, it is not the Department's responsibility to make extensive revisions to submitted information. By not providing verifiable information for U.S. interest rates when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. As facts available the Department is recalculating Highveld's credit expenses using the highest interest rate reported for any loan for all CEP sales.

Comment 32

Petitioners state that the Department should not subtract the Regional Services Council (RSC) levy from normal value as this tax is not solely rebated or not collected on exports. (See 19 U.S.C. 1677(a)(6)(B)(iii).) Highveld indicates, according to petitioners, that this levy is placed on net sales of the company, whether or not the merchandise was sold domestically or exported to another country. Petitioners argue that if the Department continues to regard this levy as a direct selling expense, then the Department should make a circumstance of sale adjustment to add back the amount of tax collected on the U.S. sales.

Highveld responds that the deduction from normal value for the RSC levy is appropriate. Highveld argues that if the Department changes its treatment of this expense in the final determination it must ensure that this expense is treated in a neutral manner to reflect the fact that it is an expense incurred for both home market and U.S. sales.

DOC Position

We agree with petitioners. We have reviewed the RSC levy since our preliminary determination and found, as Highveld itself indicated in its April 7, 1997, submission, that this levy represents a turnover tax applied to net sales, regardless of whether the merchandise was sold for the export or local market. Since the levy is not rebated and it is collected on export sales, it does not qualify as a deduction from NV under section 773(a)(6)(B) of the Act. Therefore, for the final determination we have not adjusted NV or U.S. price for the RSC levy.

Comment 33

Petitioners state that Highveld overstated home market credit expenses (see Highveld's sales verification report, at pages 43–44). Petitioners note that Highveld reported payment dates as the last day of the month, irrespective of the actual date of payment. Petitioners state that since the Department is unable to verify the accuracy of the home market credit expense and has found inaccuracies in the reported amounts using Highveld's methodology, the Department should not adjust normal value for such a credit expense. Petitioners further state that if the Department decides to make the adjustment, it should recalculate the adjustment correctly and reduce the payment period by 30 days for all home market sales before performing the credit expense calculation.

Highveld claims that it properly reported home market credit expenses. Highveld notes that the Department found a single calculation error which was attributable to the calculation of credit expense on the invoice amount due, not including a subsequently paid rebate. Highveld states that payment can be received before or after the reported payment date. Highveld explains that customers tend to pay as late as possible, making Highveld's methodology a conservative one. Highveld reiterates that it has reported the only payment date recorded in its accounting system, and urges the Department to use its reported home market credit expense, with the single exception noted above.

DOC Position

We agree in part with petitioners. Highveld did not demonstrate at verification that its payment methodology is reflective of actual dates of payment. There is no evidence on the record to suggest that payment is only made at the end of the month. Additionally, the Department notes that even using Highveld's reported methodology there are disprepancies with Highveld's reported credit expenses and those calculated by the Department. A single example of this was described in the verification report. However, a review of verification exhibits and other reported observations in Highveld's database indicates that there were in fact pervasive discrepancies, some of which were minor. For this final determination, as facts available, the Department has calculated the actual home market credit expense for the limited number of observations for which actual date of payment information was supplied. This expense was compared to the reported expense and we calculated an average percentage difference. We have adjusted all reported home market credit expenses downward by this percentage difference.

Highveld should have developed a verifiable methodology for reporting date of payment or alternatively chosen a conservative methodology for reporting these dates. See Certain Cut-To-Length Carbon Steel Plate From Germany, 61 FR 13834, 13841 (March 28, 1996). By not providing verifiable information for home market credit expenses when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

Comment 34

Petitioners stated that errors in the reported inland freight were discovered at verification (Highveld's sales verification report, at pages 44, 53). Petitioners explain that these errors included miscalculations and freight markups by Highveld. Petitioners contend that the Department should not adjust normal value for home market freight expenses since there are obvious flaws in the reported data. Petitioners state that if the Department does adjust normal value, it should first reduce reported freight expenses on home market sales by multiplying the correction value to account for calculation inaccuracies, as well as multiply by the correction value to account for the markup of freight charges.

Highveld counters that inland freight was not misreported. Highveld states that the Department discovered a single error in home market inland freight. With respect to markup charges, Highveld notes that these charges only apply to road haulage, not to all sales. Highveld claims that this percentage is an element of its accounting system, designed to capture actual expenses (such as miscellaneous shipping fees like waiting charges) and was not created for this investigation. Highveld urges the Department to correct the single error and otherwise use its reported home market inland foreign expenses.

DOC Position

We agree with respondents. Although petitioners are correct in noting that during verification we found an error in one of the calculated inland freight expenses, we also found instances where the expense was reported correctly. Upon review of the verification exhibits and the markup charges referred to petitioners, we agree with Highveld that these charges only apply to road haulage, and not to all sales, and that it is captured as an actual expense in its normal course of business. As a result, we are correcting the error referred to above and allowing all other home market inland freight charges as reported.

Comment 35

Petitioners note that Highveld was unable to exclude returns from its home market data. However, Highveld was able to report the refunded amount for such sales in REBATE2H field. At verification, the Department discovered that in several instances the amount reported in REBATE2H field did not comply with those of the company's record keeping system. Therefore, petitioners contend that the Department should not reduce the home market price by REBATE2H when calculating normal value. Additionally, petitioners state that for cases where the REBATE2H field approximates gross unit price, the sale should be thrown out of the data pool since a rebate that large would signify that most, if not all, of the sale had been returned or canceled.

Highveld argues that REBATE2H should be granted in the calculation of normal value. Highveld states that where the amounts of the rebate approximate gross unit price, the amounts were reported as negatives and the sale was effectively netted out. With respect to petitioners' claim that this rebate was misreported, Highveld acknowledges that there were a few discrepancies related to canceled sales, but states that the Department verified that the amounts otherwise reported for this rebate were accurate. Highveld urges the Department to use Highveld's reported data for this variable for the final determination, but agrees that the Department may exclude those sales where the amounts of REBATE2H approximate gross unit price.

DOC Position

We agree with both parties that we should exclude for the final determination those home market sales where the amounts of REBATE2H approximate gross unit price. We note that the discrepancies found by the Department at verification pertain to these sales that we are excluding. Consequently, we do not agree with petitioners' argument that this rebate should be disallowed for other home market sales.

Comment 36

Petitioners note that the Department found errors in the tonnages used to calculate the data reported in the REBATE8H field (Highveld's sales verification report, at page 51). Petitioners state that since the Department could not verify the accuracy of REBATE8H, it should not be used as an adjustment to normal value. However, petitioners state that the Department should use the reported REBATE8H as a deduction to price when doing the cost/price comparison.

Highveld argues that the Department should not deny it an adjustment for this rebate. Highveld claims that the tonnage discrepancy was insignificant. Highveld explains that the reason for this difference was that the tonnage used in the calculation of this rebate was based on the original sales submission, prior to the exclusion of certain sales at the request of the Department.

DOC Position

We agree with respondent. We determined that the methodology used to calculate the per customer amounts of the rebate was reasonable. As described in the sales verification report, the discrepancy identified was small, and there is no evidence that it affected the calculation of this rebate. Therefore, for the final determination we are allowing the reported amounts for REBATE8H as adjustments to NV.

Comment 37

Petitioners contend that the Department should use facts available for all handling and brokerage charges on U.S. sales. Petitioners note that verifiers found that stevedoring and total handling and brokerage was understated. Petitioners explain that verifiers also discovered that the shipping rates reported by Highveld were inaccurate (Highveld's sales verification report, at page 54). Petitioners state that the highest reported rate for any sale for each charge should be used to calculate the adjustment as facts available.

Highveld maintains that handling and brokerage charges on U.S. sales were properly calculated. Highveld claims that the discrepancies identified at verification apply only to specific shipments, not to all shipments. Highveld notes that the discrepancy amounts to less than a rand per ton and that argues that the Department should make the corrections described in the verification report, and otherwise use Highveld's reported handling and brokerage charges.

DOC Position

We agree with both petitioners and respondent in part. For the final determination we are using the reported and brokerage and handling expenses for one shipment involving certain sales which we found at verification to be correct. For a second shipment, we are correcting the expenses reported for certain sales which we found at verification involved only minor corrections (see Highveld's sales verification report, at pages 53–54). For a third shipment we examined, we found extensive inaccuracies. Because we are unable to determine the full extent of the other inaccuracies found for other shipments, we are applying the highest reported brokerage and handling expense for any U.S. sale to this third shipment and the remaining U.S. shipments. See Analysis Memo, dated October 24, 1997. By not providing verifiable information for brokerage and handling expenses when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

Comment 38

Petitioners contend that the Department should use facts available for U.S. credit expenses because verifiers found that the U.S. sales trace's credit expense was understated (Highveld's sales verification report, at page 57).

Highveld claims that its U.S. credit expenses were properly calculated.

Highveld acknowledges that credit expenses were understated for one U.S. EP sale, but argues that there is no evidence that credit expenses for other U.S. sales were misreported. Highveld states that the Department should correct the single error discovered at verification, but otherwise use Highveld's reported data.

DOC Position

We disagree with both petitioners and respondent. For the two EP sales examined at verification, one overstated U.S. credit expense and the other sale understated this expense; on average Highveld has overstated these expenses. Consequently, for this final determination we are revising reported credit expense for these two sales and are otherwise using the reported credit expenses.

Comment 39

Petitioners claim that Highveld did not report accurate data for its home market and U.S. packing expenses (Highveld's sales verification report, at pages 62–63). According to petitioners, packing materials costs were not quantified, no accurate information on labor and overhead was supplied, and all figures were based on estimates provided by management of the company. Petitioners cite 19 U.S.C. 1677m(i) and state that the estimates of the management cannot be empirically tested and thus, the data is unverified. Petitioners also cite 19 U.S.C. 1677e that states that since the necessary information is not on the record or cannot be verified, the Department should use facts available. Petitioners suggest that as facts available, the Department did not adjust the normal value for home market packing and create a U.S. packing expense by inflating the packing material cost reported for U.S. sales by the average ratio of all transformation and overhead costs to all material costs.

Highveld claims that its packing expenses were calculated in a reasonable manner. Highveld states that its accounting system does not account for separate expense categories under packaging material. Highveld states that it provided a reasonable estimate of packing materials cost and the Department should use this information rather than resort to facts available for the final determination.

DOC Position

We agree with petitioners. At verification we found that Highveld was unable to provide an explanation for the estimated and average costs used to calculate home market and U.S. packing expenses. Neither was it able to provide any documentation to support its claimed expenses. Because we were unable to verify this estimated information, we are denying home market packing expenses as an adjustment to NV.

Comment 40

Petitioners argue that Highveld is not entitled to a deduction from normal value for the RSPCC levy. In petitioners' view, this payment is essentially a payment of dues to a voluntary organization. Petitioners argue that this levy is not a tax, and that the only provision under which this adjustment could be made would be as a circumstances of sale adjustment. However, petitioners claim, it would not be appropriate to make a circumstances of sale adjustment for this levy as adjustments under this provision are limited to expenses that are *bona fide* circumstances of sale and bear a direct relationship to the sale. Petitioners note that with respect to credit, warranties or technical assistance the seller is conveying to the purchase something of value. See Certain Welded Carbon Steel Pipe and Tubes from India, 56 FR 64753, 64757 (December 12, 1991); see also Mantex v. United States, 841 F. Supp 1290, 1302–3 (CIT 1993). Petitioners argue that the RSPCC levy does not convey any value to the purchaser of the steel product, and that the levy is not a function of the buyer-seller relationship at all, but is a function of the relationship between the seller and the South African Steel Association. Petitioners claim that the levy is neither a circumstance of the sale nor directly related to the sale, and question the existence of any evidence of a causal link between the levy and home market prices.

Highveld maintains that it is entitled to a deduction from normal value for the RSPCC payment as a direct selling expense. Highveld argues that this payment is directly related to sales as the amount of the payment is calculated based on the value of local sales. While admitting that payment of the RSPCC is voluntary, Highveld states that it benefits from the RSPCC payment in the form of increased home market steel sales and that steel purchasers also receive benefits from RSPCC programs. Highveld claims that this payment does bear a causal relationship to the sale as Highveld would not make the payment in the absence of home market sales. Highveld maintains that it is not necessary to demonstrate a causal effect on prices for the Department to accept a direct selling expense and that there is a presumption that the customer is absorbing the cost of the payment as part of the total price of the steel.

DOC Position

We agree with petitioners. As Highveld's sales verification report and exhibit 24 indicate, the RSPCC levy is assessed as a fee based on the quantity of sales. The amount of the levy is paid monthly to a fund to which Highveld voluntarily is a member. The purpose of the fund is to promote the export sales of steel produced in the local market. Highveld claims that it gains benefits from belonging to the fund by way of increased home market sales. However, even if these claims are true, we do not consider this evidence of the value gained by purchasers of products subject to this investigation. As petitioners correctly point out, the RSCPP levy appears to represent a function of the relationship between Highveld and the organization to which the levy payments are made, rather than of the relationship between Highveld and purchasers of subject merchandise. We do not believe this to be a characteristic of a direct selling expense. Therefore, for purposes of the final determination, we have not deducted Highveld's home market payments of the levy from NV.

Comment 41

Petitioners claim that the Department made a clerical error in the preliminary determination regarding the calculation of CEP. According to petitioners, the Department intended to deduct indirect selling expenses incurred in South Africa converted from rand to U.S. dollars, but did not do so.

Highveld takes issue with petitioners suggestion. Highveld rejects the argument that the Department should deduct expenses from normal value after conversion into a dollar amount. Highveld also rejects the argument that indirect selling expenses incurred in the home market should be deducted from CEP. Highveld notes that the Department only deducts from CEP those indirect selling expenses associated with a sale to an unaffiliated customer in the United States. Highveld states that the expenses at issue were incurred for activities performed exclusively in South Africa, are general in nature, and are incurred for all export sales. Because these expenses do not specifically relate to U.S. commercial activity, Highveld claims they were properly not deducted. See Calcium Aluminate Flux From France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 40396, 40397 (August 2, 1996). Highveld adds that to the extent that

some portion of these general expenses might be broadly attributable to U.S. sales, they would only relate to the sale by Highveld to Newco and are, therefore, not expenses attributable to the sale to the unaffiliated purchaser.

DOC Position

We agree with respondents. The Department only deducts indirect selling expenses incurred in the country of manufacture which are specifically related to commercial activity in the United States. (See Calcium Aluminate Flux From France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 40396, 40397 (August 2, 1996).) At verification, we found that the expenses at issue were general in nature and did not relate specifically to U.S. commercial activity. Therefore, consistent with our preliminary determination, we did not deduct these expenses from CEP for the final determination.

Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with Iscor and Highveld suspending this investigation. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from South Africa. Any cash deposits of entries of cut-to-length carbon steel plate from South Africa shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received a separate request for continuation from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act on October 15, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average margin percentage
Highveld	26.01
Iscor	50.87
All Other	38.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30389 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–791–804]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From South Africa

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from South Africa. The basis for this action is an agreement between the Department and Iscor Ltd. (Iscor) and Highveld Steel and Vanadium Corporation Ltd. (Highveld) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, Nancy Decker, or Linda Ludwig, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–5811, (202) 482–0196, or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from South Africa are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 2, 1996, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31967 (June 11, 1997)).

The Department and Iscor and Highveld initialed a proposed agreement suspending this investigation on September 25, 1997. On September 26, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Iscor and Highveld.

The Department and Iscor and Highveld signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, signed October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734(b) of the Act, we have determined that the agreement will completely eliminate sales at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See Public Interest Memorandum, October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from South Africa entered or withdrawn from warehouse, for consumption, as directed in our Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From South Africa is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that