• Valued in accordance with generally accepted accounting principles;
• Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
• Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

commission expenses—payments to unaffiliated parties for sales in the HM.
credit expenses—expenses incurred for the extension of credit to HM customers.
movement expenses—freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses—include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

FOR EP TRANSACTIONS

+	direct materials
+	direct labor
+	*factory overhead*
=	Cost of Manufacturing
+	*home market SG&A*
=	Cost of Production
+	U.S. packing
+	*Profit*
=	Constructed Value
+	U.S. direct selling expense
+	U.S. commission expense
+	U.S. movement expense
+	U.S. credit expense
−	HM direct selling expense
−	HM commission expense [1]
−	*HM credit expense*
=	NV for EP sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

FOR CEP TRANSACTIONS

+	direct materials
+	direct labor
+	*factory overhead*
=	Cost of Manufacturing
+	*home market SG&A*
=	Cost of Production
+	U.S. packing
+	*profit*
=	Constructed Value
+	U.S. direct selling expense
+	U.S. indirect selling expense
+	U.S. commission expense
+	U.S. movement expense
+	U.S. credit expense
+	U.S. further manufacturing expenses (if any)
+	CEP profit
−	HM direct selling expense
−	HM commission expense
−	*HM credit expense*
=	NV for CEP sales

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

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

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Final Determination: We determine that certain cut-to-length steel plate (CTL plate) from Ukraine 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: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 31958 (June 11, 1997), the following events have occurred:

In June 1997, we verified the respondent's questionnaire responses. On July 23, 1997, the Department issued its report on verification findings. Petitioners and Respondent submitted case briefs on August 22, 1997, and rebuttal briefs on August 29, 1997. A public hearing was neither requested nor held.

On July 28, 1997, the Department provided interested parties the opportunity to submit additional publicly-available information (PAI) from surrogate countries to value certain factors of production. The Department received responses on August 18, 1997, and comments on August 25, 1997.

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. *See* memorandum on *Scope of Investigations on Carbon Steel Plate*, from Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Period of Investigation (POI)

The POI is April 1, 1996 through September 30, 1996.

Nonmarket Economy Status

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate normal value when the country involved is an NME country and the Department determines that it cannot determine normal value based on the respondent's prices or costs. In this investigation, the Government of Ukraine claims that economic conditions now prevalent throughout Ukraine warrant revocation of Ukraine's NME-country status.

Regarding the revocation of NME status, the Department's analysis centers around the government's role in economic activity. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland* (58 FR 37205, July 9, 1993). In accordance with section 771(18)(B) of the Act, in considering a country's status, the Department analyzes the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, the Department cannot conclude that home market prices or costs should be used to calculate normal value.

As discussed in detail in our Memorandum on Separate Rates (dated June 3, 1997), since 1991 the Government of Ukraine has undertaken significant market reforms and passed extensive legislation toward the development of an economy which can operate based upon free market principles. However, in applying the factors required under section 771(18)(B) of the Act, we have found that Ukraine's economy, while in transition, does not yet qualify as a market economy under the antidumping law. Therefore, we have determined that Ukraine remains an NME within the meaning of the antidumping statute.

Section 771(18)(B)(i) of the Act instructs the Department to take into account the extent to which the currency of Ukraine is convertible into the currencies of other countries. Ukraine introduced a new currency, the hryvnia, in August of 1996, which has remained quite stable against the dollar and other currencies. While the hyrvnia is traded with the Newly Independent States, it is not yet convertible elsewhere. Additionally, the Government of Ukraine retains control over the influx of foreign currency into its domestic economy by requiring that 50% of foreign export earnings be converted to hryvnias through an Interbank Currency Exchange set up by the Government of Ukraine for this purpose. *See Law On A System of Currency Regulation* (August 1993).

Pursuant to section 771(18)(B)(ii) of the Act, the Department also considers the extent to which wage rates in the foreign country are determined by free bargaining between labor and management. Although under the *Law on Enterprises in Ukraine* a collective bargaining agreement between management and workers is obligatory, it appears that with regard to wage rates and employment the government continues to be heavily involved. For example, Ukraine's Tariff Rate System grades all jobs and sets salaries based upon the level of complexity and workers' qualifications, and the Ministry of Labor establishes job position criteria through job evaluation catalogs. *See Law On Remuneration on Labor* (March 1995). All state-owned enterprises must base their wage and hiring decisions on this system. Non-state-owned enterprises must compile their own job classification and wage rates to reflect the government's system. The government also regulates where and in what manner workers are paid and provides for criminal penalties for violations by employers. *Id.*

Section 771(18)(B)(iii) directs the Department to examine the extent to

which joint ventures or other investments by foreign firms are permitted in Ukraine. As a general matter, Ukraine is open to foreign investment and the necessary supporting legislation is in place. Under Ukraine's Foreign Investment Law of 1996, its fourth foreign investment law, registered foreign investors are guaranteed equal treatment with local companies. The law also provides certain protections, including general guarantees against expropriation, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect these basic protections. In 1996, Ukraine also added new laws and regulations on energy and mining investment and taxation of goods and services imported by foreign investors. The U.S.-Ukraine Bilateral Investment Treaty, which took effect on November 16, 1996, provides further protection for U.S. investors; other such treaties exist with, among others, Canada, France, Germany, and Italy. Finally, Ukraine is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, and has enacted an international commercial arbitration law. However, areas of concern remain for foreign investors, in particular the reportedly burdensome and unpredictable arbitration and enforcement system, and the prohibition, contained in the Land Code of 1992, on foreigners owning land in Ukraine.

With regard to the extent of government ownership or control of the means of production, a factor considered under section 771(18)(B)(iv), record evidence demonstrates that the Government of Ukraine has made significant progress in privatizing state-owned business enterprises. However, privatization has proceeded unevenly thus far, with relatively rapid results in small-scale privatization and a slower pace for large-scale privatization, and much of the economy remains in the hands of the government. Notably, Ukraine has designated thousands of companies in sectors such as energy, communications, metallurgy, defense industries, and chemicals as ''strategic'' enterprises and therefore not eligible for privatization. These firms include most of Ukraine's largest companies and those with the greatest export potential. In addition, foreign investors can participate in the privatization process only through financial intermediaries (i.e., foreigners cannot acquire privatization certificates directly).

Finally, in the case of the respondents in this investigation, their status as privately-held companies is incomplete. Although respondents both qualify as ''joint stock companies,'' the majority of their shares are still owned by the government, which has yet to sell its shares in either company, either through auction, public tender, or other market mechanisms. Therefore, even though the Government of Ukraine's submissions indicate that in 1995 and 1996, 34% and 44% respectively of state-owned enterprises were privatized, it is unclear whether those figures reflect 100 percent privatization of the enterprises in question, or some continued level of government ownership, as is the case with Azovstal and Ilyich.

Pursuant to section 771(18)(v), the Department must also address the extent of government control over the allocation of resources and over output and pricing decisions of enterprises. Even with the process of privatization continuing, the Government of Ukraine still retains significant control over the means of production and in allocating resources regarding all state-owned business enterprises, as well as those enterprises leasing state-owned enterprises. Under Ukraine's *Law on Enterprises*, state-owned enterprises, or enterprises leasing state-owned enterprises, are required to fill state orders at the request of the government. Moreover, enterprises which the Government of Ukraine deems monopolies are also required to fulfill state orders, regardless of their form of ownership. *See Law On Supply of Production For State Needs.*

The government also continues to set domestic prices in some areas of the economy. According to the *Law on Prices*, the government has authority to set prices on products which affect the entire economy, to set domestic prices of monopolies, and to render to the government any monopoly profits deemed excessive. Generally, the government will deem an enterprise a monopoly where its commodity has 35 percent of the domestic market share. *See On Restricting Monopoly and Preventing Unfair Competition.*

As the above analysis indicates, the Ukrainian government has put into action a serious program of economic reform, particularly since July 1994. While significant progress has been made in Ukraine's transformation to a market economy, under the analysis required by section 771(18)(B) of the Act, we cannot conclude that Ukraine should be treated as a market economy for purposes of the antidumping duty law. While many of the state controls have been abandoned, functioning markets have not completely replaced government controls. Because the evidence does not demonstrate that prices and costs in Ukraine adequately reflect market considerations, we cannot at this time alter Ukraine's designation as a nonmarket economy under the antidumping law.

Fair Value Comparisons

To determine whether certain carbon steel plate from Ukraine sold to the United States by the Ukrainian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Azovstal and Ilyich, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We corrected the respondent's data for errors and minor omissions submitted to the Department and found at verification. We calculated EP in accordance with our preliminary calculations.

Normal Value

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Brazil as our surrogate country. Brazil is an appropriate country for the reasons set forth in our preliminary determination. *See* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Ukraine (*Policy Memo*). Since we find no compelling reason to change this selection (see below for comments and further analysis), we have continued to base FMV on the values of the factors of production as valued in Brazil.

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. To calculate NV, the verified amounts for the factors of production were multiplied by the appropriate surrogate

value for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of overhead, SG&A, and profit. For the final determination we based the percentages for overhead, SG&A and profit on the detailed public version of CST's and Usiminas' financial statements that was placed on the record of this investigation by Respondents. *See* Comment 7, below.

Critical Circumstances

The Department has continued to find that critical circumstances exist for cut-to-length carbon steel plate by all Ukrainian exporters.

Verification

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

Separate Rates

Comment 1: Separate Rates

Petitioners oppose the Department's granting of separate rates to Respondents. Petitioners argue that the Department should calculate and apply a single country-wide rate because Respondents' exports of subject merchandise from Ukraine were subject to *de jure* and *de facto* government controls, including minimum price and registration requirements, during the POI. At verification, Petitioners argue, the Department found that the companies were required to register contracts in order to control prices to avoid dumping. Also, Petitioners state that the Department found that export contracts over $3.5 million are subject to government approval and that minimum pricing is mandatory.

Petitioners argue that the inconsistencies between the governmental Decrees requiring registration and a government official's representation that registration is unnecessary until antidumping proceedings have been initiated led the Department to conclude that registration is for monitoring purposes only. However, Petitioners claim that based on a straight reading of the laws, registration is necessary for purposes of administering the minimum price requirements and other actions controlling exports. Petitioners argue that this requirement is part of a larger Ukrainian regime controlling export activities, including the setting of minimum prices.

Petitioners stress that the Government of Ukraine publishes ''indicative prices'' pursuant to a February 10, 1996 Presidential Decree but that the Department inappropriately concluded that the decree did not apply to subject merchandise exported during the POI. Petitioners contend that the categories are not exhaustive and include goods where ''special regimes'' are applied. Petitioners argue that this appears to give the government very broad legal control over setting prices since the term is not defined or explained. Petitioners contend that the Department should imply that investigations of subject merchandise fit within the category of ''special regime'.

Furthermore, Petitioners interpret the February 24, 1996 Ministry of Foreign Economic Relations and Trade (MFERT) Order to mean that the export controls are applied not only after an antidumping investigation has been initiated, but also to prevent the initiation of such an investigation. Petitioners point out that the MFERT Order provides a list of commodities aimed at preventing antidumping and that the subject merchandise is on this list. Therefore the preventive nature of this order indicates that special export requirements can, and did, apply to subject merchandise prior to the initiation of the antidumping investigation. Petitioners also point to statements as described in the verification report by both Azovstal and Ilyich that pricing controls have applied to their exports of steel plate since 1995. In addition, Petitioners argue that the government-published price lists are convincing evidence that minimum price restrictions were applied to subject merchandise during the POI. Thus, the Department should not find that Azovstal and Ilyich are entitled to separate rates in the final determination.

Finally, Petitioners state that it is undisputed that upon initiation of this investigation, at the very least, the minimum price and registration requirements became applicable to Respondents' exports of subject merchandise. Petitioners argue that the policy behind applying a country-wide dumping margin, to avoid government circumvention of antidumping orders, is prospective in nature. Accordingly, Petitioners argue, even if the government controls had not been in effect during the POI, the prospective nature of the country-wide margin policy warrants application of a single-country-wide rate. Lastly, Petitioners argue that the recent government decree ordering the two respondents to merge makes clear that the government exercises direct control. Petitioners argue that the government is the alter ego of the companies and that this, combined with the registration and minimum price requirements, is the type of government control that warrants application of a single country-wide rate.

Respondents counter that the law and regulation issued on February 10, 1996 authorize the government to establish price guidelines for monitoring purposes, in certain circumstances, but only under the following conditions: (a) the prices are merely ''indicative'' and not mandatory; (b) they may be issued only for certain goods subject to antidumping procedures, import procedures, quotas, licenses, or other special regimes; and (c) these indicative prices may be established only to the extent that these goods may be exported free from state control, as provided in Article 20 of Ukraine's Law ''On Foreign Economic Activity.'' Respondents argue that Article 20, which discusses antimonopoly must be read together with the February 10, 1996 Presidential Decree. Respondents argue that Article 20 provides for state control of the export and import of weapons and certain other items (not including the subject merchandise) and specifically provides that any organizations, including state-owned ones, have no right to prevent other subjects of foreign economic activity from the free exercise of such activity. Respondents claim that this interpretation is consistent with statements by a MFERT official that no pricing controls were observed during the POI, and that the indicative prices did not apply to the subject merchandise during the POI.

Respondents further argue that Petitioners' theory that a system of indicative prices instituted after the POI retroactively translates into a system of price controls is neither factually correct nor in accordance with Department practice. Respondents argue that the intent of the law and the Department's practice has been to permit the calculation of separate rates where export prices, during the POI, were set by respondents rather than the government. Respondents argue that not only have all of the conditions for separate rates have been met, as evidenced at verification, but the unilateral actions of both Respondents to change their legal status from leaseholding societies to that of stock companies, and the right to pursue litigation against the government prove Respondents' independence from government control. Respondents further argue that Petitioners' assertion that registration requirements are part of the larger Ukrainian regime controlling

export activities is nonsense and that goods subject to export controls, as defined in the February 10, 1996 Resolution, does not include the subject merchandise.

Department Position

Based on evidence on the record and our verification findings, we have determined that Azovstal and Ilyich are entitled to separate rates in the final determination.

The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and therefore do not make independent business decisions. This presumption can only be overcome by a respondent's affirmative showing that it conducts its exporting activities without government control. Evidence on the record supports a finding that Azovstal and Ilyich have met their affirmative evidentiary burden.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under the test set forth in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 2285 (May 2, 1994) (*Silicon Carbide*). The Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

The Department considers three factors which support, though do not require, a finding of *de jure* absence of government control. These factors include: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide.*

1. Absence of *De Jure* Control

As described in our Preliminary Determination and *Memorandum on Separate Rates,* dated June 3, 1997, Respondents have placed on the administrative record a number of submissions to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the Government of Ukraine which deregulate Ukrainian state-owned enterprises and Ukrainian export trade. Moreover, Respondents provided laws and regulations specifically governing their enterprises, which provide these companies with legal autonomy to make their own operational and managerial decisions during the POI and are evidence of the good faith effort on the part of the Government of Ukraine to decentralize control of state-owned companies. For a more detailed description of these laws, see *Separate Rates Memorandum,* dated June 3, 1997.

Because the government has now created a right of ownership of business enterprises for private persons and collectives, leaseholding societies, such as Azovstal and Ilyich, formerly state-owned and operated, are now distinct legal entities. In general, this ownership right allows business enterprises to freely engage in economic activity, negotiate and sign contracts, and independently develop business plans. Collectives, like the leaseholding societies of Azovstal and Ilyich, may independently select management through elections by the workers collective and may exercise control and direction over the general director through a contract between the enterprise and the general director. Enterprises, including collectives, may have their own bank account, and, after taxes, may keep the profits from their sales, and engage in foreign economic activity, generally, without government interference.

Although there is no longer a general export licensing regime in place, the Ukrainian Government continues to retain *de jure* control over exports for certain categories of goods, including goods subject to antidumping duty investigations and antidumping duty orders. Mandatory controls are in place regarding: (1) the registration of contracts for export of these goods and (2) the setting of ''indicative prices'' for these goods by the government.

With regard to registration, foreign economic agreements (contracts) are registered with MFERT pursuant to the 1994 Order of the President, *On Registration of Certain Types of Foreign Economic Agreements (Contracts) in Ukraine Order of the President of Ukraine*, November 7, 1994. Under the February 24, 1996 MFERT Order, during the POI, it was necessary to register a contract for export of subject merchandise to the United States because under this Order, the United States is one of the listed countries and the subject merchandise is one of the listed goods. Therefore, contrary to the Ukrainian Government's assertions, contracts for export of the subject merchandise to the United States during the POI were legally required to be registered. However, we find that in this instance, registration is for statistical and tax collection purposes, and for monitoring compliance by exporters with international trading rules and agreements. There was no evidence at verification to indicate that through registration the Government of Ukraine did anything other than monitor foreign economic activity of exports of certain goods in order to prevent dumping by exporters subject to antidumping measures in other countries and thereby ensure compliance with international trading rules.

Moreover, even though MFERT must approve export contracts of over $3.5 million, we find that the purpose of this exercise is to monitor such activity for tax collection and to ensure that large volume exports of goods subject to antidumping measures or other international trade agreements are not being dumped and are in compliance with the government's international agreements (*e.g.*, suspension agreements with the European Union). Therefore, we find no evidence to support Petitioners' claim that by registering contracts for sales of subject merchandise during the POI the government was controlling export pricing, per se.

With regard to the setting of prices, since 1994 the government has set minimum export prices for certain categories of goods. While some minimum export prices are obligatory, others are more in the nature of guidelines to assist Ukrainian exporters in pricing their goods competitively in various export markets. During the POI, pursuant to the *Decree of the President of Ukraine On Measures Regarding the Improvement of Price Policy Configuration in Foreign Economic Activity,* February 10, 1996, the Government of Ukraine published these so-called ''indicative prices'' on a

monthly basis. According to the 1996 Decree, minimum prices are mandatory where the exporter of Ukrainian goods is subject to antidumping measures applied by other countries, including the initiation of antidumping investigations. The export of the subject merchandise during the POI was not subject to the mandatory pricing controls described. However, as Petitioners correctly point out, under this 1996 Decree, merchandise covered by this investigation was subject to mandatory pricing after the initiation of our antidumping investigation. However, there is no evidence on the record to support Petitioners presumption that the subject merchandise falls within the ''special regime'' referred to in the February 1996 Decree. Therefore, we cannot find that subject merchandise is included in a special export pricing regime.

In a somewhat analogous situation, the Department preliminarily determined that mandatory minimum export prices set by the Chinese government, intended to control worldwide prices of exported honey and to increase such prices through macro-economic means, did not preclude the respondent companies from receiving separate rates. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 60 FR 14725 (March 20, 1995) (*Honey*). In *Honey,* the Department found that, among other things, the companies were free to independently negotiate export prices with their customers above the floor price. In other words, when considering the totality of all circumstances, the Department found in *Honey* that the companies had sufficient independence in their export pricing decisions from government control to qualify for separate rates. This is also the case with Azovstal and Ilyich, both of which the Department verified to have independently negotiated export prices above the minimum prices set by the Government of Ukraine. *See de facto* section below and the *Verification Report,* dated July 25, 1997.

Based on evidence on the record, we find that during the POI there was no *de jure* control of export prices of subject merchandise. Moreover, we find that, even though there was de jure control of export prices for subject merchandise after the initiation of our antidumping investigation, because the stated purpose of these minimum prices was to avoid dumping by Ukrainian exporters, such measures do not, in and of themselves, indicate that the Government of Ukraine controls export activities of companies. Rather, we have concluded that, similar to our determination in *Honey,* such government action is not contrary to a finding of separate rates, because its only purpose is to avoid dumping measures applied by other countries and because it demonstrates an effort on behalf of the government to comply with international trading rules as it enters the world marketplace.

The purpose of applying one country-wide rate in an NME context is to prevent an NME government from later circumventing an antidumping order by controlling the flow of subject merchandise through exporters which have the lowest margin. Here, the requirement of registration and the setting of floor prices do not demonstrate that the government can control exporters in such a manner. To the contrary, it is evidence of the government's good faith attempt to monitor exports of certain goods to ensure that such goods are not traded unfairly.

2. Absence of *De Facto* Control

Each respondent exporter has asserted, and we have verified, the following: (1) each sets its own export prices subject to indicative prices, as discussed below; (2) each negotiates contracts without guidance from any governmental bodies; (3) each makes its own personnel decisions with regard to selection of management through elections by the members of the leaseholding societies, and the General Director and his appointed Deputies have authority to negotiate and enter into contracts on behalf of the enterprise; and (4) each has separate bank accounts and retains the proceeds of its export sales (although 50 percent of foreign currency earnings must be converted into Ukrainian currency), uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. *See Verification Report,* dated July 25, 1997. In addition, there is no record evidence indicating that company-specific pricing during the POI was coordinated among exporters.

Both Azovstal and Ilyich stated that prices are negotiated with their customers and are not subject to approval or review by the government. However, both companies also told the Department's verifiers that prior to, and during the POI they were required by Ukrainian Customs officials to sell subject merchandise at the minimum price published monthly by MFERT for all sales to the U.S. market. *See Verification Report,* dated July 25, 1997. Thus, as discussed above, while there was no *de jure* control of export prices for subject merchandise during the POI, there was *de facto* control of such pricing by the Government of Ukraine. Nevertheless, as discussed above, we do not find that setting of minimum prices to eliminate dumping by exporters creates sufficient government control over exporting activities to disqualify Azovstal and Ilyich from receiving separate rates.

Furthermore, at verification additional information and documentation was provided which demonstrates that Azovstal and Ilyich were not controlled by the government, but were separate legal entities that were in control of their business operations and planning during the POI. *See Verification Report* at 3–6. For example, during the POI, both companies paid rent to the Ukraine State Property Fund, the government entity owning the steel plants leased by both companies, and entered into negotiations regarding an increase in rent due to hyperinflation. *Verification Report* at 6. Additionally, during the POI, a Cabinet of Ministers Decree was issued which attempted to merge the two respondents. *Verification Report,* Exhibit SR–3. However, during that time both companies continued the privatization process for state-owned companies, as was their legal right under the reforms instituted by the Government of Ukraine, discussed above. The merger did not transpire and shortly after the POI both companies became public joint stock companies. *Verification Report* at 6.

Additionally, when a decree was issued during the POI by the Ukraine State Property Fund appointing another General Director in place of the elected general director of Azovstal, the company went to the Ukrainian Arbitration Court. *Verification Report,* Exhibit SR–3. Azovstal claimed that by law the Ukraine State Property Fund had no authority to issue a decree which directly conflicted with legal reforms regarding a lease-holding society's right to elect its own management. *Id.* As a result, the Ukraine State Property Fund issued a second decree voiding the earlier decree, and Azovstal continues to have the same duly elected General Director. *Id.* Taken together, these findings provide further proof that Azovstal and Ilyich were not controlled by the government but were independent during the POI.

Based on the record evidence, we find that various legal reforms did provide Azovstal and Ilyich the ability to protect their rights to autonomy in their day to day business operations, including their exporting activities. *See Separate Rates*

Memorandum, dated June 3, 1997; *Verification Report*, dated July 25, 1997.

Consequently, we determine that there is, legally and factually, absence of governmental control of export functions during the POI. Contrary to Petitioners' arguments, the Department does not examine the period after the POI to determine separate rates. However, we will continue to closely examine the effect, in fact and in law, of actions of the Government of Ukraine with respect to any reassertion of government control over the export activities of these companies. However, based on the evidence on the record, we have granted separate rates for this final determination.

Ukraine-Wide Rate

As stated above, we have granted separate rates for Azovstal and Ilyich. However, all other Ukrainian companies will be subject to the Ukraine-wide rate.

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain cut-to-length carbon steel plate from Ukraine is greater than the total quantity and value of steel plate reported by all Ukrainian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Ukrainian certain cut-to-length carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Ukraine-wide rate—to all exporters in Ukraine (other than the two named as receiving separate rates), based on our presumption that those respondents who failed to respond constitute a single enterprise, and are under common control by the Ukraine government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996).

This Ukraine-wide antidumping rate is based on adverse 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 that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including the information drawn from the petition.

As discussed above, we have treated all Ukrainian exporters that did not qualify for a separate rate as a single enterprise owned and controlled by the Government of Ukraine. Because some exporters of the single enterprise failed to respond to the Department's requests for information, the single enterprise is considered to be uncooperative. (*See Concurrence Memorandum*, dated October 24, 1997, for the list of exporters.) In such situations, consistent with section 776(b)(1) of the Act, the Department generally selects as adverse total facts available the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. *See also, Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 96 FR 27222 (May 19, 1997). In the present case, the average margin in the petition is higher than any calculated rate. Accordingly, the Department has based the Ukraine-wide rate on the average petition rate of 237.91 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA (H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)), clarifies that the petition is ''secondary information'' and that ''corroborate'' requires that the information relied upon have probative value.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition indicates that petitioners calculated export price based on: (1) the import values declared to the U.S. Customs Service, and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioners, less the importer mark-ups, to prices derived from contemporaneous U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its company-specific margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioners in the production of steel plate. Petitioners submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. To account for differences between the production processes of petitioners and potential respondents, Petitioners submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods.

The margins in the petition, which ranged from 201.61 to 274.82 percent, were obtained by Petitioners by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted-average of the two. See Corroboration Memorandum, dated June 3, 1997.

Comment 2: Pirated Sales

Petitioners contend that certain ''pirated'' sales of steel plate produced by Ilyich should be included in the margin calculation because there is a strong likelihood that a large volume of similar sales may have ultimately entered the United States. In addition, Petitioners argue that there is a very high likelihood that these sales have gone unreported and the Department should apply an overall facts available rate for Ilyich because they did not properly respond to the Department's questionnaires.

Ilyich argues that the Department properly excluded pirated sales from the preliminary margin calculations and should continue to do so for the final determination. Ilyich argues that it made these sales believing they were destined to third countries and had no knowledge that these sales were ultimately destined for the United States. Ilyich argues that at verification the Department examined two of these pirated sales and concluded that Ilyich had no prior knowledge that the shipments were to be delivered to the United States. Ilyich further claims that it is the Department's practice not to include such sales in its determinations under these circumstances and cited several cases as precedent.

Department Position

We agree with Respondent. It is the Department's practice to include as U.S. sales only those sales known by the producer/exporter to be destined for the United States at the time of sale and delivery. *See, e.g., Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China,* 60 FR 52155, 52158 (October 5, 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440, 16445 (March 30, 1995). Based on findings at verification, the Department has determined that these originally non-U.S. bound shipments were delivered to the U.S. without prior knowledge of Ilyich. Therefore, consistent with our preliminary determination and Department practice, we have not included the pirated sales in the final margin calculation for Ilyich.

Comment 3: Surrogate Country Selection

Respondents argue that Brazil is an inappropriate surrogate for Ukraine for several reasons. Respondents state that, because Ukraine's economy has undergone radical transformations in recent years, the Department should reconsider its choice of a surrogate country based upon changed economic conditions and/or possible industrial incomparability. Respondents claim that the Department has shown its willingness to reconsider its choice of a surrogate country if a given country is no longer comparable and cite *Certain Helical Spring Lock Washers from the People's Republic of China:* Memorandum to David Binder from David Mueller, Office of Policy re: *AD Investigation of Sebacic Acid from the PRC:* Non-market Economy Status and Surrogate Country Selection (9/23/93), among others, to support their argument.

Next, Respondents argue that it is the Department's preference to select the country closest to the NME country under investigation in terms of the GDP when faced with multiple potential surrogates and cite several cases to support this position. For instance, Respondents compare the instant case to *Final Determination of Sales at Less Than Fair Value: Beryllium Metal from Kazakstan,* 62 FR 2648 (June 11, 1997), where the Department rejected Brazil as a surrogate because Brazil's GDP was far in excess of Kazakstan's. Respondents argue that the variance between Ukraine's GDP and Brazil's GDP is similarly excessive. Respondents contend that Brazil's Gross Domestic Product (GDP) is now more than double that of Ukraine and the World Bank classifies Brazil within a different tier of countries than Ukraine. Furthermore, Respondents claim that Brazil's industrial data is maintained via an accounting system which deviates from generally accepted accounting principles because it requires producers to maintain two separate sets of financial records, one to report historical costs of corporate activities and another to report the effects of inflation and currency fluctuations on those corporate costs and revenues. Respondents further argue that the Department's use of Brazilian labor rates also illustrates the inappropriateness of using Brazil as a surrogate. However, if Brazil is chosen as a surrogate, Respondents argue that surrogate prices from other countries should be used where the use of Brazilian prices will produce distorted results and cite *Certain Cased Pencils from the People's Republic of China,* 59 FR 55625 (Nov. 8, 1994) (*Pencils*), as precedent.

Respondents submit that Poland is a preferable surrogate choice because it is the only country which satisfies both statutory criteria of comparable economic development and significant production of CTL plate. Respondents argue that in practice the Department will change its choice of surrogate where it finds a compelling reason to make the change and cite *Notice of Final Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995) (*Pure Magnesium from Russia*) and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine,* 60 FR 16432 (March 30, 1995) (*Pure Magnesium From Ukraine*). Respondents argue that Poland is an appropriate surrogate in terms of the similarity of its history of economic development, industrial infrastructure and distribution of labor and production. In addition, Respondents submit that the quality of data publicly available from Polish companies compares to that of Brazil.

Petitioners counter that there is no basis nor compelling reason for changing surrogate countries in the final determination and further emphasize that the cases Respondents cite, *Pure Magnesium from Russia* and *Pure Magnesium from Ukraine,* did not affirmatively state that the Department will change surrogate countries where ''compelling reasons'' exist. The Department did not change surrogate countries in either case.

Furthermore, Petitioners argue that Brazil is comparable to Ukraine in terms of economic development, as recognized in this case and in other cases involving Ukraine. Petitioners claim that the World Bank's classification for Ukraine is preliminary and moreover, that this category contains countries whose per capita GNPs vary widely, including some that differ more widely from Ukraine's GNP than does Brazil's. Furthermore, Petitioners add that when the Department issued its surrogate country selection memorandum, it was aware of the GNP levels of Brazil, Poland, and Ukraine and stated that all countries are equally comparable to Ukraine in terms of economic development. Petitioners argue that even if Poland's GNP is closer, the Department has already determined that any such difference is insignificant. Petitioners argue that per capita GNP is only one of several measures the Department considers in determining the most appropriate surrogate country and cite *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Romania,* 62 FR 31075 (June 6, 1997). Petitioners further argue that Poland's rate of per capita GNP growth was positive, while that of both Brazil and Ukraine was negative. Additionally, the purchasing power parity GNP for Brazil and Poland are virtually the same. Moreover, citing *Technoimportexport* v. *United States,* 15 CIT 250, 255, 766 F. Supp 1169, 1175 (1991) (*Technoimportexport*), Petitioners argue that the Department does not have to choose the most comparable surrogate country and cite petitioners claim that Brazil also satisfies the Department's other criteria for selection of a surrogate country.

For example, Petitioners contend, Brazil is a significant producer of subject merchandise and there is a wealth of publicly available information on factor prices in Brazil. Furthermore, Petitioners claim that use of Brazil as the surrogate country will not produce aberrational results in this investigation and argue that in the case cited by Respondents, *Pencils,* the Department rejected certain surrogate data because it pertained to a type of material not used to produce the subject merchandise. Moreover, Petitioners claim that the alleged inconsistencies between Brazilian accounting methods and GAAP are not sufficient grounds to deem financial ratios aberrational since the Department has extensive experience dealing with Brazilian financial statements.

Petitioners argue that the Department has obtained reliable Brazilian surrogate values for virtually all factors of production and stress that the record does not contain complete surrogate values for Poland. Moreover, Petitioners argue that the data available for Poland is of lesser quality. For example, Petitioners claim that the format used in the Polish financial statements renders them virtually impossible to use for purposes of calculating surrogate financial ratios. Petitioners therefore argue that Poland does not satisfy the information-availability criterion that the Department uses to assess the appropriateness of a potential surrogate country.

Finally, Petitioners argue that the Department should rely only on Brazil for all surrogate values in the final determination based on its preference for using only one surrogate country.

Department Position

We agree with Petitioners and have continued to use Brazil as the surrogate country in the final determination. Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME and (2) are significant producers of comparable merchandise. As discussed in the preliminary determination, Brazil is at a level of economic development comparable to Ukraine in terms of per-capita GNP levels and distribution of the labor force in the varying sectors of the economy. Furthermore, Petitioners are correct in stating that even if Poland's GDP is closer to that of Ukraine's than is Brazil's, per capita GNP is only one of the measures that the Department considers in determining the most appropriate surrogate country. Furthermore, Brazil is a significant producer of comparable merchandise. Thus, Brazil fulfills both statutory criteria and qualifies as an acceptable surrogate for Ukraine under section 773(c)(4) of the Act. *See also* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Ukraine (*Policy Memo*).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. *See* 19 U.S.C. 773(c)(1)(B) (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); *see also, Lasko Metals* v. *United States*, 43 F3d. 1442, 1443 n.3 (Fed. Cir. 1994). As stated above, Brazil qualifies as an appropriate surrogate because it satisfies the statutory criteria listed. Furthermore, we were able to obtain publicly available contemporaneous information on all factor inputs required. Thus, the selection of Brazil also achieves the Department's goals of providing transparency and reasonable accuracy in valuing factors. Moreover, our choice of Brazil provides predictability for Ukrainian exporters as the Department has used Brazil as a surrogate for Ukraine in past antidumping proceedings. *See Initiation of Antidumping Duty Investigation: Pure and Alloy Magnesium for the people's Republic of China, the Russian Federation, and Ukraine,* 80 FR 21748 (April 26, 1994).

While we have used surrogate prices for selected surrogate values from countries other than the selected surrogate country in previous cases, to the extent possible it is the Department's preference and practice to rely on information from the first choice surrogate country to value all factors for which such information is available. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 21058 (May 18, 1992).

Thus, because acceptable public information from Brazil is available for all material input factors, it is unnecessary for us to use data from other countries. Therefore, the Department has continued to use only Brazil as the most appropriate surrogate country for purposes of this final determination. *See generally, Policy Memo.*

Comment 4: Commissions

Azovstal argues that commissions were properly excluded from its database because the company receiving commissions was not an affiliated reseller in the United States. Azovstal further argues that, because the payment of a commission on a U.S. sale in a non-market economy (NME) investigation is not offset by direct selling expenses on home market sales, the Department ignores home market sales and relies solely on surrogate SG&A expenses in calculating normal value. Azovstal cites several cases where the Department has rejected similar adjustments in prior NME proceedings, including *Final Determination of Sales at Less than Fair Value: Coumarin from the People's Republic of China,* 59 FR 66895 (December 28, 1994); *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991); and *Final Notice of Sales at Less than Fair Value: Pure Magnesium from Ukraine,* 60 FR 16432 (March 30, 1995).

Petitioners argue that, because these commissions have been verified and there is no evidence to indicate that the rate of the commission was other than arm's length, the Department must deduct these commissions from U.S. price pursuant to 19 CFR section 353.41(e)(1). Furthermore, Petitioners claim that the cases cited by Azovstal do not support its argument and that in this case, the commissions paid to AST, Avostal's reseller in London, have not been taken into account in the U.S. or the foreign market price.

Department Position

In accordance with section 772(d)(1)(A), in CEP circumstances, the Department's normal practice is to deduct commissions from U.S. sales price as direct selling expenses if the commissions were incurred when making the sale to the United States. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996). In the present case, we do not have CEP sales and have not deducted commissions in calculating EP. Azovstal did not incur any commissions directly on U.S. sales, as all sales were made through trading companies not located in the United States, which incurred the selling expenses associated with the individual transactions. Therefore, we have continued to utilize the methodology from our preliminary determination and have not adjusted for commission expenses on U.S. sales for this final determination.

Comment 5: Movement Charges

Petitioners argue that the Department should use facts available to determine the surrogate value of movement and storage charges incurred but not reported by both respondents. Petitioners argue that Azovstal had unreported movement charges for which there are no surrogate values on the record and that Ilyich did not report the costs for storage for which there are also no surrogate values on the record. Therefore, the Department should apply facts available.

Azovstal claims that it reported the appropriate movement charges in its April 11, 1997 and August 22, 1997, responses as requested by the Department. In regards to Petitioners allegations regarding storage charges, Azovstal and Ilyich argue that these charges are not movement expenses but are direct selling expenses. Respondents cite the Department's Antidumping

Manual which indicates that expenses are directly related to the sales under consideration and assert that it is the Department's practice to make a circumstance of sale adjustment for such expenses. Moreover, both Azovstal and Ilyich claim that the Department does not make these adjustments in NME cases because there is no offset for home market sales. Both Respondents argue that consistent with this methodology, the Department did not even include a field for warehousing or storage in its U.S. Sales file. Under the circumstances, Azovstal argues that the Department should use its reported charges rather than facts available. Therefore, both Azovstal and Ilyich argue that the Department should make no adjustments for storage charges for either company.

Department's Position

Pursuant to section 773(6)(B), the Department adjusts normal value for movement expenses which are incident to bringing the subject merchandise in condition packed ready for shipment to the United States. We verified that Respondents reported movement expenses to our satisfaction. Moreover, the surrogate value that we applied in our preliminary determination included all movement and handling charges to ship subject merchandise from the factory to the port, which also takes into account storage/warehousing expenses. Therefore, any additional deductions for movement expenses would, in effect, result in double-counting.

Additionally, we agree with Respondents' claim that the Department does not adjust EP sales for warehousing expenses under section 772(c)(2)(A). In an NME case, it is the Department's policy to not deduct warehousing expenses from EP because there is no comparable adjustment on the home market side.

Comment 6: Packing Expenses

Petitioners argue that, because there is no evidence to suggest that the prices on Respondents' sales invoices do not include packing costs, the Department incorrectly added packing expenses to Respondents' reported U.S. prices for purposes of the preliminary determination.

Respondents did not comment on this issue.

Department Position

We agree with Petitioners. We incorrectly added packing expenses to export price in the preliminary determination. Accordingly, for the final determination we have adjusted for packing expenses in the calculation of normal value.

Comment 7: Factory Overhead, SG&A, and Profit

Petitioners claim that the Department's preliminary results did not include all factory overhead costs and that a dumping margin cannot accurately be calculated without the inclusion of non-depreciation overhead costs. Although Petitioners have been unable to find publicly available information in Brazil, they provided one integrated Korean steel producer's public financial statement (Pohang Iron & Steel Co., Ltd. (''POSCO'')) which provided a detailed list of the types of non-depreciation expenses incurred as manufacturing costs. Petitioners urge the Department to either use the percentages from POSCO's financial statement as facts available to approximate the proper amount of factory overhead costs, or use the Department's resources to find additional information on the surrogate value.

Respondents argue that Petitioners' claim that surrogate value information from Brazil on factory overhead must be adjusted based upon the experience of a Korean steel producer underscores the flawed nature of this information and of the surrogate value information from Brazil for SG&A and profit. Respondents argue that the Department should reject information from Brazil, because it is insufficient and use information from Poland in calculating normal value.

Respondents further argue that if the Department should continue to use Brazil as the surrogate, it should recalculate the surrogate overhead, SG&A, and profit rates in accordance with generally accepted accounting principles as the Department did in *Titanium Sponge from the Russian Federation*, 61 FR 3938 (July 29, 1996) (*Titanium Sponge*) (see below). Furthermore, Respondents argue that the Department was incorrect to use data from the Brazilian steel producers' financial statements that was for the POI. Respondents argue that, consistent with its prior practice, the Department should use financial data contemporaneous with the POI and assert that the use of a ''constant of currency'' accounting system is inappropriate now that Brazil's inflation rate is only at 18 percent. Respondents provided the 1996 public financial statements of two Brazilian companies and provided recalculated ratios for overhead, SG&A, and profit.

Respondents argue that in *Titanium Sponge from the Russian Federation*, 61 FR 3938 (July 29, 1996) (*Titanium Sponge*), the Department used only the line item expenses which corresponded directly to the factor values which were calculated. Respondents argue that the Department should make adjustments to the reported net income data and further asserts that, when calculating the SG&A factor the Department incorrectly included profit sharing expenses. Respondents state that profit sharing expenses do not represent actual expenses incurred by the companies but reflect the value of profits shared with employees and management, dividend distributions to employees, and annual taxes on net income.

Petitioners rebut by stating that the Polish financial statements are substantially less reliable than the Brazilian financial statements. Petitioners claim that, because the Polish financial statements fail to separately account for costs of sales and SG&A costs, any ratios calculated from the financial statements would be distorted. Also, Petitioners state that one of the Polish financial statements contains no specific information on factory overhead costs. Petitioners additionally argue that the Department's preliminary calculations are consistent with Brazilian GAAP and the Department's normal methodology for calculating costs. The Petitioners maintain that, while the methodology used in *Titanium Sponge* was required by the insignificance of the operating costs in that case, in this case, the other general expenses are not insignificant and were properly included in the calculated ratios. Petitioners argue that it is the Department's practice to include all non-extraordinary cost items in its calculations. Thus, Petitioners argue because SG&A normally includes other costs like non-operating costs, the Department should disregard Respondents' claim that only those items nominally identified as SG&A should be included. Petitioners further argue that the Department appropriately included social contributions and profit sharing costs in its SG&A calculation. Petitioners additionally assert that constant currency financial statements provide the most reasonable measure of the overhead, SG&A, and profit ratios because it is the Department's preference to base its calculations on such statements and because the ratios would be calculated on values that are on the same basis. Petitioners argue that the Department should use the 1996 financial statements of CSN previously submitted by Petitioners.

Finally, Petitioners argue that, if the Department does use the financial statements prepared under the corporate legislative method of accounting or

historical cost method, it should revise the calculations submitted by Respondents. Petitioners argue that Respondents have understated the SG&A costs by excluding certain non-operating costs and have artificially reduced net income by ignoring income actually earned by the companies while at the same time failing to account for the increase in net income that results from not taking certain expenses into account.

Department Position

We disagree with Petitioners' suggestion to use the data from a Korean steel producer's financial statement to calculate factory overhead and we also disagree with Respondents' suggestion to use Polish data. It is the Department's practice to only use data from those countries listed as potential surrogates identified in the *Policy Memo* (*see* cases cited above.) Korea was never identified as a potential surrogate for the Ukrainian economy. Although Poland was identified as a potential surrogate, it is the Department's preference to use a single surrogate country as the source of data in a NME investigation unless such value is aberrational or otherwise inappropriate. *See* Comment 3. Therefore, the Department will continue to use Brazilian data for the final determination.

We agree with Respondents that the Department should use the financial data of producers in the surrogate country which are contemporaneous with the POI, and we have done so for this final determination. In general, the Department will not seek information from particular producers in the surrogate country to value material inputs or electricity. The exception to this rule is for overhead, SG&A, and profit. For these categories of costs, the Department will seek product-specific information from producers in the surrogate country, where possible. *See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China,* 62 FR 1708 (January 13, 1997). Based on the submitted information and the Department's own research, we agree with Respondents that the financial data from the 1996 income statements of the two Brazilian steel companies we used in the preliminary determination, CST and Usiminas, are the most appropriate surrogate information available to calculate the percentages for overhead, SG&A, and profit for our final determination. In the preliminary determination the Department determined that both CST and Usiminas were significant producers of merchandise similar to that under investigation and both had public financial statements available for the Department's calculations.

When using Brazil as a surrogate country in the past, including in our preliminary determination, the Department used constant currency financial statements because they adjust costs for the effects of inflation. Brazil, in the past, has experienced significant inflation and significant changes in the value of its currency. However, in 1996, the Brazilian economy was no longer in a state of hyperinflation as its inflation rate dropped to 18 percent and its currency stabilized. In non-hyperinflation situations, it is the Department's practice to calculate ratios based upon historical cost financial statements. *See generally,* SAA at 164. The corporate legislative method of accounting is the primary source for GAAP in Brazil. Therefore, we have used the 1996 income statements of CST and Usiminas, prepared under the corporate legislative method of accounting in our final determination.

In contrast to our preliminary determination, for this final determination, in order to ensure that all costs are properly accounted for, we revised the overhead ratio to include employee profit sharing in accordance with our practice. Despite the manner in which labor costs are packaged (*i.e.*, either through straight salary, profit sharing, etc.), total labor costs remain the same to the employer. This includes all profit sharing expenses. *See Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 25908 (May 12, 1997), where the Department determined that profit sharing expenses relate to the compensation of direct labor. Labor is captured in the cost of manufacturing which is part of the cost of sales. Thus, we have included profit sharing in overhead. However, if a company broke out profit sharing between employees and management, as CST has done, we included management profit sharing in the SG&A calculation and employee profit sharing in the overhead calculation. *See Final Determination Calculation Memorandum,* dated October 24, 1997.

Consistent with prior Department practice, we have continued to include social contributions in SG&A for the final determination. *See Final Determination Calculation Memorandum,* dated October 24, 1997. *See also, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil,* 58 FR 7080 (February 4, 1993).

Comment 8: Usage Factors

In the preliminary determination, the Petitioners argue that the Department did not calculate the dumping margin for all of Respondents' U.S. sales. Petitioners argue that the Department's inability to calculate dumping margins results directly from Respondents' failure to provide the factor usage data required to determine normal value and that, as a result, the Department should use adverse facts available to determine the dumping margins for all U.S. sales for which Respondents failed to provide the usage factor information.

Respondents argue that the Department should not use adverse facts available to determine dumping margins for any U.S. sales by Azovstal and Ilyich because the absence of normal value matches for these sales was not due to the companies' failure to report factor usage for those sales. Rather, it was the result of typographical errors which resulted in incorrect CONNUMU designations. Respondents argue that factor usage was provided by both companies for all sales and should be used to determine dumping margins. Azovstal argues that its missing matches were the result of a typographical error in the field ''PLCHECK'' and an error in the related portion of the CONNUMU which described the product as such. Azovstal argues that for all of Azovstal's products, the field ''PLCHECK'' should be categorized the same way because Azovstal only produces merchandise with that characteristic. Azovstal claims that a review of those CONNUMUs described by Petitioners as not having matching normal values in relation to other CONNUMUs in Azovstal's U.S. Sale Listing and Azovstal's Section D computer response clearly shows that the absence of corresponding factor usages for the CONNUMUs in question is the result of an inadvertent error.

Ilyich argues that its two CONNUMUs without corresponding factor usages are for products identical to those listed under two other CONNUMUs. Ilyich argues that when preparing its Section C Response it inadvertently used two CONNUMUs for the same products in two instances. Ilyich argues that, as such, there is no need to use facts available. Rather, the Department has all necessary data and should treat each pair of corresponding CONNUMUs as a single CONNUMU.

Department Position

Petitioners are correct that we did not calculate the dumping margin for all U.S. sales because of the absence of some normal value matches, as described above. However, while the Department is always concerned with such discrepancies, we did not identify any attempt by Respondents to mislead the Department or to distort information on the record, nor does the record indicate that Respondents were uncooperative. Rather, the record indicates that, while the Respondents inadvertently misreported their CONNUM listings, they nevertheless complied with all Department requests to the best of their ability under the circumstances. Therefore, we have determined that such inadvertent errors do not warrant an overall application of adverse facts available. Accordingly, for this final determination we have corrected all such errors using an overall average of the final dumping margins for each Respondent's U.S. sales. The details of these errors and steps we have taken to correct them are set forth in the *Final Determination Calculation Memorandum,* dated October 24, 1997. *See also, Concurrence Memorandum,* dated October 24, 1997.

Comment 9: Surrogate Value for Labor

Respondents argue that the Department's calculation of a surrogate value for labor illustrates the distorted effects which result from using Brazil as a surrogate for Ukraine. Respondents argue that the Department's BISNIS report indicates that Ukraine's hourly labor rate is less than $1.00. Therefore, Respondents argue, Poland is a preferable surrogate because, when compared to Brazil it is more comparable in terms of its labor rates. Furthermore, Respondents claim that Poland is also more comparable to Ukraine in terms of the makeup of its workforce and the percentage of the workforce engaged in industrial activity.

Petitioners argue that Respondents are comparing general employment data for Ukraine to inadmissible new information regarding Poland. Petitioners further argue that even if the Polish information was admissible, it does not support Respondents' challenge to the use of Brazil as a surrogate country because the information does not provide surrogate values related to labor costs for making steel or the costs of providing housing for workers.

Department Position

As discussed in Comment 3, we have determined that Brazil is the appropriate surrogate country for this investigation. Furthermore, the Department has determined, that Brazilian wage rates are not aberrational but provide a reasonable surrogate value for the cost of labor for producing steel and thus, do not warrant an attempt to find more comparable values. Therefore, we have continued to use the same labor calculation used in the preliminary determination in the final determination.

Comment 10: Labor Usage Rates

Petitioners argue that, because the Department examined Azovstal's reported labor usage rates at verification and determined that they were inaccurate, the Department should revise Azovstal's reported labor usage rates to reflect its verification findings.

Respondents did not comment on this issue.

Department Position

We agree with Petitioners. We verified the correct labor rates and have incorporated those figures for the purpose of our final determination.

Comment 11: Siliconmanganese Slag

Respondents claim that slag is a by-product that has relatively little value in relation to the primary product produced, with the slag's market value depending on its use. Respondents argue that the Department should not value siliconmanganese slag using the full value of ferroalloys since to do so would produce an aberrational surrogate factor that is far greater in value than the slag at issue. Respondents argue that siliconmanganese slag is a substitute for manganese ore and is valued in the market based on its manganese content. Respondents assert that the proper valuation for Ukrainian siliconmanganese slag is a percentage of the surrogate value of manganese ore, rather than 100 percent of the value of ferroalloys.

Petitioners argue that the value of siliconmanganese should be based on the value of ferroalloys because Respondents claim that the input is used only as a substitute for manganese ore is unsupported. Furthermore, Petitioners argue that the figures quoted by Respondents regarding the alleged percentage of manganese content in siliconmanganese slag and the alleged value of siliconmanganese as a percentage of manganese ore are based on an unverified, untimely submitted letter. However, Petitioners argue that if the Department does decide to use the information provided by Respondents, as facts available, the value of siliconmanganese slag should be calculated at a higher percentage of the value of manganese ore.

Department Position

We agree with Respondents in part. Based on the Department's knowledge of the steel production process and independent research (including 15 Encyclopedia of Chemical Technology (4th Ed. 1995) at 963–980 and Velichko, et al., 1 Stal' (1993), a Ukrainian article which explains the typical composition of siliconmanganese for a specific Ukrainian plant), we have determined that the chemical makeup of siliconmanganese is primarily manganese. Therefore, we have valued siliconmanganese slag at 100 percent the value of manganese ore.

Comment 12: Limestone, Dolomite

Respondents claim that the Department should not value limestone and dolomite based upon the full value of lime. Respondents argue that, not only is limestone probably the least expensive of all raw materials used in the industry, but, based on information from the U.S. Geological Survey, in the United States limestone and dolomite are valued at 8.39 percent and 8.68 percent of lime, respectively. Respondents claim that the Department should, therefore, value limestone and dolomite using the Survey's percentages.

Petitioners argue that the Department's valuation of limestone and dolomite is correct. Petitioners claim that a single value was applied to both products as information available because Respondents failed to provide separate information on each factor. Petitioners claim that Respondents are now attempting to file new information which is untimely, and assert that, even if this information were admissible, it is unusable because the alleged values are based on U.S. statistics. Petitioners further argue that nothing in the record supports Respondents' implication that the relative value of lime to limestone in the United States is equivalent to that in Brazil and that there is no information regarding the value of dolomite to limestone in any country.

Department Position

We agree with Petitioners. Moreover, the Department's research indicates that both limestone and dolomite are equivalent to lime. *See* Making, Shaping and Treating of Steel (10th ed. 1985). We have, therefore, continued to value limestone and dolomite at the full value of lime for the final determination.

Comment 13: Wood

Respondents claim that the wood it utilizes in packing/loading was verified through invoices provided to the Department.

Petitioners argue that the Department should use its PAI information and conversion factor to value wood.

Department Position

Based on both Petitioners' and Respondents' submissions and briefs, we have used Respondents' value for softwood and applied Petitioners' conversion methodology to calculate a factor for wood packing. *See Final Determination Calculation Memorandum*, dated October 24, 1997.

Comment 14: Publicly Available Information (PAI)

Petitioners argue that the Department should use the factor value information contained in it submissions because this information is the only reliable PAI on the surrogate values of the factors, and because the information submitted by Respondents is based on an inappropriate surrogate country and is fraught with errors.

Respondents argue that the Department should not use Petitioners' PAI. Respondents argue that the Department should change its surrogate from Brazil to Poland (Comment 3). Respondents argue that much of the information on the record concerning material factors for Poland are UN statistics corresponding to the statistics submitted by Petitioners themselves for Brazil, as well as to statistics used by the Department in its preliminary determination.

Department Position

We do not agree with Petitioners' contention that its own publicly available information is the only reliable information for valuing factors. However, as stated throughout this notice, the Department has continued to use Brazil as the surrogate for the final determination. Therefore, whether the information on Poland is reliable is irrelevant, as we have only used PAI from Brazil to value factors in this investigation.

Continuation of Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Government of Ukraine (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from Ukraine. Any cash deposits of entries of cut-to-length carbon steel plate from Ukraine 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 from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act, on October 14, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average percentage margin
Azovstal	81.43
Ilyich	155.00
Ukraine-Wide Rate	237.91

The Ukraine-wide rate applies to all entries of subject merchandise except for entries from Azovstal and Ilyich.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final 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 shall be terminated. *See* section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (1) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *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. 97–30391 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

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

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 Ukraine. The basis for this action is an agreement between the Department and the Government of Ukraine wherein the Government of Ukraine has agreed to restrict the volume of direct or indirect exports to the United States of CTL plate from all Ukrainian producers/exporters and to revise its 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: Nithya Nagarajan, or Eugenia Chu, 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) 482–1324, or (202) 482–3964 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 Ukraine 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 11, 1997, 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 31958, (June 11, 1997)).

The Department and the Government of Ukraine initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties