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

Dated: March 20, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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[A–428–816]

Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On July 13, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), February 4, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1995, the Department published in the Federal Register (60 FR 36105) the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Germany (58 FR 44170, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

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

Scope of These Reviews

The products covered by this administrative review constitute one ''class or kind'' of merchandise: Certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included 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. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is February 4, 1993, through July 31, 1994. This review covers entries of certain cut-to-length carbon steel plate by AG der Dillinger Hüttenwerke (Dillinger).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Dillinger) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company a Unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company). Dillinger requested a hearing then subsequently withdrew its request; therefore, no hearing was held.

Comment 1: Petitioners assert that based on the overwhelming number of problems with Dillinger's information, the Department has no choice but to apply total best information available (BIA). Petitioners base their assertion on a claim that, despite an inordinate number of opportunities to correct its deficient submissions, Dillinger has still failed to provide reliable data on even the most fundamental elements of the Department's analysis. According to petitioners, the Department's verification reports and exhibits demonstrate Dillinger failed verification. Petitioners assert that problems with Dillinger's data include: a majority of Dillinger's home market sales transactions examined at verification contained erroneous data; Dillinger's product coding contains systemic problems; Dillinger failed to demonstrate complete reporting of U.S. sales for 1994 and home market sales for 1992 and 1994; Dillinger failed to resolve a discrepancy between verification documentation and reported U.S. sales quantities; Dillinger did not provide the necessary actual to theoretical weight conversion factors for cost of production (COP), constructed value (CV), and differences in merchandise (DIFMER) adjustment; Dillinger miscoded customer levels of trade; Dillinger failed to demonstrate that certain freight services provided by related parties were at arm's-length; Dillinger failed to demonstrate that commissions paid to related parties were at arm's-length; Dillinger failed to provide information regarding 500 related companies thus preventing the Department from verifying whether they provide Dillinger with services related to subject merchandise; Dillinger extensively misreported dates of sale and failed to demonstrate to the Department that its reported sales took into account changes in price and payment date; Dillinger reported as date of payment the date on which payment was due to it rather than the actual date on which payment for home market sales was received; and Dillinger's data contains numerous additional inaccuracies and omissions.

Petitioners cite the Department's recent decision to assign total (uncooperative) BIA to Mannesmannrohren-Werke AG (MRW) in *Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Germany* (60 FR 31978–79—June 19, 1995). Petitioners argue that this makes the case for applying total BIA to Dillinger all the more compelling because Dillinger's errors and omissions are far more egregious than those committed by MRW. In the *Seamless Pipe* case, petitioners note that the Department found that: MRW company officials were unable to explain or provide adequate documentation for numerous discrepancies and omissions; DIFMER data could not be tied to the financial statements; and MRW did not adequately demonstrate that sales data reported to the Department took into account changes in price, quantity, and date of sale. Similarly, the petitioners assert that the Department's verification reports and exhibits indicate that the Department encountered essentially the same problems with respect to Dillinger's responses, and demonstrate that the Department was unable to verify the completeness of either Dillinger's reported home market or U.S. sales databases. Therefore, according to petitioners, Dillinger's home market and U.S. sales databases have not been demonstrated to be reliable and thus cannot be used to calculate accurate dumping margins.

According to petitioners, significant errors in reporting product characteristics, sale dates, and levels of trade effectively eliminate any possibility of matching home market and U.S. sales. Petitioners assert that the failure to identify related parties renders reported charges and expenses meaningless.

Petitioners argue that Dillinger has significantly impeded the Department's administration of this review by providing seriously deficient information. Furthermore, petitioners claim that Dillinger failed to alert the Department to any difficulties with respect to, among other deficient areas, the reporting of: levels of trade; prime/non-prime merchandise; actual/theoretical weights and conversion factors; and dates of sale. Moreover petitioners argue that Dillinger has repeatedly ignored or provided incomplete and/or inaccurate responses to the Department's requests for information. Therefore, petitioners continue, the Department should disregard Dillinger's responses and use as BIA, the highest rate ever applicable to the firm for the same class or kind of merchandise from the investigation.

Finally, petitioners assert that if the Department determines to contradict its standard practice (*see Defrost Timers from Japan* (59 FR 1928—January 13, 1994), *Tapered Roller Bearings from Japan* (60 FR 22349—May 5, 1995), and *Certain Carbon Steel Flat Products from Belgium* (58 FR 37083, 37084, 37090—July 9, 1993)) and erroneously concludes not to apply total BIA, it should make certain adjustments which are discussed in petitioners' other comments.

Respondent argues that petitioners concentrate on arguments which are either not supported by the record evidence, supplant the Department's judgment of what data should have been verified or taken into evidence as verification exhibits, or take out of context judicial opinions and ignore the relevant case law and standard practices of the Department. Certain of petitioners' comments (*i.e.*, regarding the majority of Dillinger's home market sales containing erroneous data) are nothing more than unsupported statements.

Specifically, respondent contends that contrary to petitioners' assertions, the Department verified the completeness of Dillinger's reported home market and U.S. sales databases. Concerning petitioners' allegation that there is a significant discrepancy in Dillinger's reported value of U.S. sales, respondent argues that it satisfactorily demonstrated that its own accounting records list only the price of the merchandise as it leaves Germany. This value does not include expenses, which are incurred by Francosteel (Dillinger's related U.S. selling agent), included in the sales price to the first unrelated purchaser (*e.g.*, U.S. duty, U.S. inland freight, etc.). The respondent contends that the Department verified the total sales value and quantity for both 1993 and 1994 at Francosteel and tied these amounts to Francosteel's financial statements. Therefore, respondent argues that petitioners' allegation has no foundation in fact.

Respondent further argues that petitioners' assertions of significant errors in reporting product characteristics, sales dates, levels of trade, and failure by Dillinger to identify related parties, are without merit. Respondent contends that the evidence on the record unequivocally shows that the data submitted by Dillinger was verified and accurate in all material respects.

With respect to partial BIA, the respondent does not believe any adverse changes should be made to any item addressed by the petitioners, but if the Department decides to change its calculations, only the actual figure attributable to the sale in question should be changed. Alternatively, a reasonable figure, such as an average of the data provided, should be used rather than the most adverse number advocated by petitioners.

Department's Position: We agree with respondent that the use of total BIA is not warranted in this administrative review. Dillinger has been cooperative throughout the proceeding. While we did discover some errors and discrepancies at verification, the extent and magnitude of the errors and discrepancies did not exceed those that are commonly found at verification and were not so large as to render the Dillinger's reported information unusable. Therefore, we find the use of total BIA unjustified. Regarding date of sale, while changes in price or quantity may have occurred after the date of sale Dillinger reported, the reported price and quantity were correct. In other words, only the date of sale may have been wrong. As the verification report notes, home market date of sale is the date a sale is originally booked in the computer; the date is not changed in this database if the order is subsequently modified. As noted in the preliminary results, we have used shipment date as date of sale for home market sales in our calculations. The rest of petitioners' individual allegations are addressed in other comments.

Comment 2: Respondent argues that the Department incorrectly added a reserve for demolition of an old coking plant. It states that the plant was torn down in 1984—ten years prior to the POR, and that it ended production in July 1984. Accordingly, it states that the cost to demolish this plant can correctly be allocated only to the steel which was the beneficiary of this plant's production. Respondent summarizes that since that steel is not subject to this review, no adjustment is permissible.

Petitioners respond that the Department correctly added this accrual to COP and CV. They state that Dillinger apparently capitalized the costs of demolishing the coke plant because these costs were expected to benefit future periods. Petitioners argue that the subsequent accruals, therefore, represent the periodic benefit which Dillinger associated with the demolition. Petitioners argue that the fact that these expenses were included in Dillinger's fiscal 1993 financial records indicates that the accruals continued through the period of review. The petitioners further state that this accrual differs from the reversal of prior year operating expense accruals (which represent a correction of an estimate made in a prior year) which the Department does not include in COP and CV (*see, e.g., Small Diameter*

Circular Seamless Carbon and Alloy, Standard Line, and Pressure Pipe from Italy, 60 FR 31981, 31991, June 19, 1995).

Department's Position: We disagree with the respondent. This accrual was recorded in Dillinger's accounting records during the POR. It is the Department's general practice to include accruals which are recognized in the respondent's audited financial statements in the COP/CV calculations. While the old coking plant does not benefit current operations, its removal does by rationalizing operations which was recognized in the financial statements during the POR. In *Steel Pipe from Italy*, 60 FR 31981, 31992 (June 19, 1995), we found that upon disposal of assets, the gain or loss associated with them would be included in COP/CV at that time. The demolition of the coke plant is equivalent to the disposal of an asset; therefore we are continuing to include this accrual in the calculation of COP/CV.

Comment 3: Respondent argues that the Department should not have added an amount for Rogesa's (Dillinger's supplier of pig iron and a partially owned subsidiary) write-off of receivables from Saarstahl AG (SAG) (Dillinger's sister company), to COP and CV. Respondent argues that this amount resulted from sales of pig iron by Rogesa to SAG, which were written-off by Rogesa as an extraordinary loss solely because of SAG's bankruptcy. Dillinger further states that because Rogesa is a producer of pig iron and because SAG uses the pig iron to manufacture non-scope products (neither Rogesa nor SAG are producers of carbon steel plate), there is no link between this sale of pig iron and the antidumping order on sales of carbon steel plate by Dillinger. Respondent cites the fact that in prior cases, the Department has determined an extraordinary loss should be included in COP only if it relates to the production of subject merchandise (*Antifriction Bearings from Japan: Final Results*, July 11, 1991, 56 FR 31692, 31734). Finally, respondent states that if the Department continues to include this amount in COP and CV, it should at least reduce the amount by 50 percent. It states that the cost verification report acknowledges that Rogesa would be responsible for only half the amount written off because of Rogesa's profit/loss sharing agreement with its parents.

Petitioners respond that the Department has considered expenses related to bankruptcy proceedings to be ordinary operating expenses, as opposed to extraordinary expenses (*see Fresh and Chilled Atlantic Salmon From Norway*, 58 FR 37912, 37915, July 14, 1993); even if these expenses were extraordinary, they still may be included in the COP and CV if they are related to the subject merchandise. The petitioners further state that the relevance of the SAG bankruptcy expenses to Rogesa is indicated by the fact that the expenses were incurred by Rogesa and were entered on Rogesa's accounting records in the normal course of business. Petitioners continue that since Rogesa booked these expenses as extraordinary rather than operating expenses relating to particular merchandise, these expenses relate to Rogesa as a whole rather than to particular merchandise manufactured or sold by Rogesa. Petitioners claim that accordingly, these expenses are properly included in COP and CV. Petitioners note that COP and CV comprise all costs of producing the subject merchandise including general and administrative (G&A) expenses which relate to the company as a whole rather than to the production process. According to the petitioners, including these expenses in the COP of the pig iron was correct since the pig iron sold to Dillinger is used in the production of subject merchandise. Finally, petitioners disagree with respondent that if the Department includes this expense in COP and CV, it should at least be reduced by 50 percent. Petitioners assert that the fact that Rogesa's parent companies absorb its profit or loss has no relevance to the determination of Rogesa's cost of producing the pig iron used in manufacturing the subject merchandise.

Department's Position: We agree with petitioners that these expenses are properly included in the COP for pig iron. We found these expenses to be write-offs of receivables from SAG. Write-offs of receivables are bad debt expenses. The Department considers these to be ordinary operating expenses because they are by their very nature indirect selling expenses since, under generally accepted accounting principles, bad debt is recovered over time by future price increases (see *Fresh Cut Roses from Columbia*, 60 FR 6980, 7014). Since cost information was used for the purchase of pig iron from Rogesa (rather than acquisition price) and since these expenses are ordinary operating expenses, which relate to Rogesa as a whole, they are properly included in Rogesa's COP along with Rogesa's other general expenses. The fact that Rogesa's parents absorb its profit or loss has no relevance. Rogesa's sales must cover all of its expenses (production and general). Rogesa's G&A costs were divided by total production to give a cost per ton of pig iron. We have treated the bankruptcy costs like Rogesa's other general or overhead expenses.

Comment 4: Respondent argues that Department should not have included two expenses related to SAG's bankruptcy in COP and CV. According to respondent, one of the costs related to Dillinger's assumption of SAG's debt to another company. Respondent states that since SAG does not produce carbon steel plate, this cost is not relevant to the antidumping duty order because it is not related to the production or sale of carbon steel plate by Dillinger. According to respondent, the other cost was an extraordinary loss that resulted from the write-off of claims against SAG for pension obligations, which were to be reimbursed to Dillinger. Again, Dillinger claims that since these expenses do not concern the production of carbon steel plate, they have no relevance to the antidumping duty order.

Petitioners argue that Dillinger: booked these expenses as extraordinary expenses rather than operating expenses relating to particular merchandise; entered into an arrangement to assume various debts of SAG and to write-off receivables owed by SAG; and was jointly liable for SAG's tax liability. Petitioners assert that the bankruptcy expenses assumed by Dillinger, therefore, relate to Dillinger ''as a whole'' and should be included in the G&A component of COP and CV.

Department's Position: We disagree with respondent. Contrary to respondent's characterization, we found these expenses to be write-offs of receivables from SAG and its subsidiaries. Write-offs of receivables are bad debt expenses. The Department considers these to be ordinary operating expenses because they are by their very nature indirect selling expenses since, under generally accepted accounting principles, bad debt is recovered over time by future price increases (see *Fresh Cut Roses from Columbia,* 60 FR 6980, 7014). Therefore, we have included these in the indirect selling expense portion of COP/CV.

Comment 5: Petitioners argue that the Department should include all the bankruptcy expenses related to Dillinger Htte Saarstahl (DHS) (Dillinger's and SAG's parent company) and SAG. Petitioners assert the Department considers bankruptcy costs to be ordinary operating expenses (see *Fresh and Chilled Atlantic Salmon from Norway* (58 FR 37912, 37915—July 14, 1993)). According to petitioners, even extraordinary expenses may be included in calculating the COP and CV under the principle of full absorption costing provided they are related to the subject merchandise (see *Tapered Roller Bearings from Japan* (56 FR 41508, 41516—August 21, 1991) and *Welded Stainless Steel Pipe from Korea* (57 FR 53693 and 53694—November 12, 1992)). Petitioners argue that although Dillinger contended SAG was not involved in the manufacture of subject merchandise, the information Dillinger submitted at verification indicated otherwise. Petitioners assert that the majority of expenses booked by Dillinger and Rogesa involve write-offs of receivables owed by SAG to Dillinger and Rogesa. According to petitioners, these receivables were generated as a result of the operations of Dillinger and Rogesa. Petitioners claim that while the Department adjusted for Rogesa's write-off of receivables from SAG in the preliminary results, it did not adjust for receivables forgiven by Dillinger or for debts assumed by Dillinger and Rogesa, or other expenses of bankruptcy. Petitioners assert that these remaining bankruptcy expenses should be included in Dillinger's COP/CV. Petitioners note that Dillinger and Rogesa incurred G&A costs (which the questionnaire describes as those which relate to the company as a whole rather than to the production process) to save DHS (their parent) from bankruptcy. Petitioners argue that the exclusion of such costs is contrary to Department practice, and therefore, the costs should be included in G&A.

Respondent argues that the Department correctly excluded certain expenses related to SAG's bankruptcy. It argues that these expenses are not G&A, regardless of the petitioners' characterization, and therefore, don't relate to the company as a whole. According to respondent, many are selling expenses unrelated to scope merchandise (incurred by SAG on purchases unrelated to plate). According to respondent, petitioners do not explain how sales of pig iron by Rogesa to SAG, another non-producer of plate, can be tied to the product under review because there is no connection.

Department's Position: Of the bankruptcy expenses, the Department included: Rogesa's write-off of receivables from SAG in the cost of manufacturing (COM), as explained in Comment 3; and Dillinger's write-off of receivables from SAG and its subsidiaries in the indirect selling expense portion of COP/CV, as explained in Comment 4. The Department did not include the following in COP/CV: Dillinger's and Rogesa's assumption of DHS and SAG liabilities (including VAT responsibilities) and bank debts (that is Dillinger and Rogesa assumed some of SAG's bank debts) because these expenses are not directly related to production. The fact that Rogesa and Dillinger assumed some of SAG's debts does not relate to the manufacture of subject merchandise.

Comment 6: Petitioners argue that the Department should include severance payments made during the POR in Dillinger's COP/CV. They state that during the POR, part of a prior period accrual for severance payments was reversed, and a certain amount was actually paid. Neither was included in the COP/CV calculations, but the petitioners argue, the actual payments should have been included. Petitioners assert that although Dillinger had claimed earlier in the proceeding that the reversal should have been included, this amount was properly excluded. Petitioners claim that this conforms with the Department's recent statement in *Steel Pipe from Italy* (60 FR 31981, 31991—June 19, 1995). However, the petitioners argue that the severance payments made in 1993 should be included in COM because they relate to the manufacturing expenses during the POR. According to petitioners, in *Steel Flat Products from Japan* (58 FR 37174), the Department stated that termination allowances represent an expense recognized within the period of investigation and should be reflected in the product cost in accordance with full absorption costing principles.

The respondent argues that the Department should not just exclude the reversal of the accrual for severance payments but deduct the reversal from COP/CV. It claims that the Department included accruals of severance expenses in its COP calculations in the original investigation of Dillinger. It would be inequitable and without justification for the Department to now ignore the reversal of the accrual for the identical expense. Unlike the case cited by petitioners, Dillinger claims it will achieve revenue or reduced operating costs because it will no longer have to pay the sums involved. According to the respondent, the Department's general view in *Steel Pipe from Italy* does not make sense. According to the respondent, the Department will only accept a reversal of an accrual in the same year as the original accrual. Respondent argues that in that case, there would be no accrual in the financial statement in the first place. Respondent argues that this type of adjustment is conceptually identical to a warranty expense. According to respondent, most warranty expenses do not occur for sales within the period of review; they are often granted later, yet the Department recognizes this as a legitimate expense to be allocated over sales to which they do not apply. Respondent argues that the same holds true for reversals of accruals.

Department's Position: We disagree with petitioners that the actual severance payments should be included in COM. These expenses are applicable to the COM of the period in which they were accrued, which is not the period of review. This is in accordance with full absorption costing principles, which, contrary to petitioners' assertion, is consistent with the *Japanese Flat Products* case. In that case, the termination allowances were recognized within the period of investigation and therefore reflected in the product cost in accordance with full absorption costing principles. In the instant review, the severance expenses were recognized and accrued in a prior period. In the period of review, Dillinger is simply paying severance amounts out of the prior period expense/accrual.

We also disagree with respondent that the reversal of the accrual should be included in COM. The original accrual occurred in 1990. The accrual being reversed relates to costs expensed in 1990, which was before the period of investigation. Therefore, these costs do not relate to the merchandise under review. While reversals of accruals are in accordance with generally accepted accounting principles (GAAP), the Department relies on GAAP if it does not distort costs. In this case, reversing costs that were accrued in 1990 distorts costs in the POR. Furthermore, as we found in *Steel Pipe from Italy,* we do not consider it appropriate to reduce current year production costs by the reversal of prior year operating expense accruals and write-downs of equipment and inventory. The subsequent year's reversal of these estimated costs does not represent revenue or reduced operating costs in the year of the reversal. Rather, they represent a correction of an estimate which was made in a prior year. The position of the Department in *Steel Pipe from Italy* considered the facts in that case, which included write-offs and write-downs. These types of costs are not the costs at issue here. There is not justification for distorting actual production costs incurred in a subsequent year by reducing subsequent year costs by the overestimated amount.

Comment 7: Petitioners argue that the Department should correct the reduction Dillinger made to its COP and CV by reversing a prior period accrual for its Stahlzulage (steel subsidy program). As petitioners discussed in

Comment 6, the Department does not consider it appropriate to reduce current year production costs by the reversal of prior year operating expense accruals (see *Small Diameter Circular Seamless Pipe from Italy* (60 FR 31991) and *Al Tech Specialty Steel Corp.* v. *U.S.*, 651 F. Supp. 1421, 1430 (CIT 1986)). Petitioners assert that because Dillinger has reduced its production costs by the reversal of prior period operating expense accruals, the inclusion of Stahlzulage in COM is improper.

The respondent argues that Dillinger's financial statements, in accordance with GAAP, reversed an accrual for a Stahlzulage subsidy. They state that this was verified, and the Department treated this item correctly in the Preliminary Results and should continue to do so in the Final Results.

Department's Position: We disagree with petitioners. The reversal of the Stahlzulage is permitted by German GAAP, and it is related to assets in use during the POR. Therefore, it is appropriate to include this amount in COM. In *Italian Steel Pipe,* the Department did not consider it appropriate to reduce current year production costs by the reversal of prior year operating expense accruals based on the fact that these were estimated expenses. In the instant review, the Stahlzulage is not an estimate but an amount which is intrinsically linked to assets (currently used in production) based on a program which was allowed by German law. Also, petitioners' citation to *Al Tech* is inapposite. The issue in that case was whether a subsidy determination could be made in the context of an antidumping proceeding. The court ruled that such an investigation could not be undertaken. With respect to the present proceeding, there has been no countervailing duty investigation that has resulted in a determination that the ''Stahlzulage'' is in fact a subsidy. Pursuant to *Al Tech,* the Department is precluded from making such a determination in this antidumping administrative review.

Comment 8: The petitioners argue that the Department should correct the understated amount of Usinor Sacilor's G&A attributed to Dillinger. Dillinger's method of identifying the share of its parent's (Usinor Sacilor's) G&A attributable to Dillinger's operations is flawed. Petitioners contend that the unconsolidated amount (*i.e.*, parent operating expenses less operating revenue) used to calculate this part of G&A equals net operating income or loss, not G&A as should have been calculated. Given the oversight nature of Usinor Sacilor and that no information regarding Usinor Sacilor's unconsolidated expenses is on the record, the Department should consider all of Usinor Sacilor's unconsolidated operating expenses as G&A and should recalculate the parent company portion of Dillinger's G&A accordingly.

Respondent contends that it correctly reported Usinor Sacilor's G&A expenses. According to respondent, only the net expenses of Usinor Sacilor, a holding company without any production of its own, are allocated to affiliated companies; therefore, the net expenses represent G&A expenses which are allocated to operating subsidiaries. Respondent claims that as a non-operating company, Usinor Sacilor only incurs G&A expenses. Although Dillinger disagrees that Usinor Sacilor's G&A expense should be included at all, if it is, the Department's methodology was correct.

Department's Position: We disagree with petitioners. The amount Dillinger used to calculate Usinor Sacilor's G&A attributable to Dillinger was taken from Usinor Sacilor's financial statements. Because the unconsolidated company is a non-producing holding company, the only expenses it incurs are general in nature. It would incur expenses on its own behalf and on behalf of its subsidiaries. Revenue it receives (including reimbursements from subsidiaries) offsets the G&A it incurs on behalf of its subsidiaries. The difference between these two amounts is the G&A expense of the parent company itself. A more detailed allocation is not possible, and is not required, given the absence of more detailed information on the record.

Comment 9: Petitioners contend that the Department should include home market commissions paid to related parties in the calculation of home market selling expenses for COP/CV (SELLCOP). The preliminary margin program determines whether sales were made below cost by comparing net price with COP. Yet, the petitioners claim, the Department did not include in this program the expenses related to Dillinger's related party commissions despite the fact that these are clearly costs of production. Petitioners assert that home market commissions should have been included in SELLCOP (which only included indirect selling expenses in the preliminary results).

Respondent argues that the Department should exclude home market commissions paid to related parties in the calculation of home market selling expenses for purposes of COP. Since Dillinger included both its own indirect selling expenses as well as those of its related sales agent, Saarlux, in the indirect selling expense field, the petitioners' methodology of including Saarlux's sales commissions as well would be double counting.

Department's Position: We agree with respondent. Since Saarlux's expenses are included in indirect selling expenses, commissions to Saarlux should not also be included in total selling expenses for COP/CV. Since Dillinger pays Saarlux commissions to cover Saarlux's costs related to Dillinger's sales, to include both the commissions and Saarlux's actual costs would be double-counting. Since Dillinger did not demonstrate that commissions were at arm's-length, we would not use these commissions as a cost in any event.

Comment 10: Petitioners contend that the Department should apply BIA to determine the COP, CV, and DIFMER of sales for which no weight conversion factor was provided. The weight of steel is an essential element in determining unit price. Dillinger reported all U.S. sales on a theoretical weight basis and home market sales on either a theoretical or actual basis. Petitioners assert that Dillinger did not provide conversion factors to compare home market prices reported on a theoretical weight basis to COP reported on an actual weight basis. Petitioners argue that the Department, therefore, cannot apply the sales-below-cost test to such home market sales. In addition, petitioners assert that conversion factors were not provided to compare the CV amounts, reported on an actual weight basis, to U.S. sales on a theoretical weight basis. In the flat-rolled steel investigation, the Department recognized that U.S. and home market prices, as well as COP and CV, must be on the same weight basis to accurately calculate margins (*see Cut-to-Length Carbon Steel Plate from Finland* (58 FR 37122 and 37123—July 9, 1993) and *Certain Welded Stainless Steel Pipes from Taiwan* (57 FR 53705, 53711—November 12, 1992)). Petitioners assert that although Dillinger eventually provided conversion factors to permit price-to-price comparisons on the same weight basis, it did not provide factors for converting the costs of producing merchandise from an actual to theoretical weight basis. Therefore, petitioners continue, sales prices, on a theoretical weight basis, cannot be compared to COP and CV, which are based on actual weight.

Petitioners argue that Dillinger ignored the questionnaire's explicit instruction to report COP and CV on the same basis as sales were reported. Dillinger's responses state that its cost accounting system uses actual material prices and actual material quantities, and that the average actual cost of materials and processing per ton for all production, at each step, is calculated monthly. The factors Dillinger provided to convert the weight of home market merchandise sold on an actual weight basis to a theoretical weight basis cannot be used to convert COP or CV to a theoretical weight basis because the conversion factors provided are transaction specific and not control number (CONNUM) specific. Accordingly, the Department should apply BIA to all sales for which Dillinger failed to provide a conversion factor to enable the COP/CV to be compared on the same measure of weight as prices (*i.e.,* all U.S. sales compared to CV and all home market sales made on a theoretical weight basis).

Respondent contends that it reported COP, CV, and DIFMER on a theoretical weight basis. Dillinger reported actual costs and actual weights of inputs at the beginning of the production process. According to respondent, the actual cost per ton of the finished product was calculated using theoretical weight. According to Dillinger, it used theoretical weight as the denominator for the per ton calculation of COP, CV, and DIFMER amounts. Respondent further asserts that there is no weighing station at the end of the production line in the factory. Dillinger does not know the actual weight of each production run, much less record it for cost accounting purposes. The Department can therefore correctly calculate dumping margins using COP, CV, and DIFMER data.

Department's Position: We disagree with petitioners that Dillinger reported its costs on an actual weight basis. When Dillinger reported that it uses actual material prices and actual material quantities, the ''actual'' in that sense refers to the actual in actual cost accounting versus standard cost accounting (used for cost inputs), as opposed to the actual in actual weight versus theoretical weight. Verification Exhibit 2 includes a map of the plate rolling mill. This reveals, as respondent contends, that there is a scale at the entrance to the mill, but there is not one at the end of the process. Therefore, they cannot weigh the finished product at the end of the product line, which indicates that finished product costs are based on theoretical weight. Also, on pages 5–6 of Dillinger's November 14, 1994, Section VI response, Dillinger indicates that its inventory value, which is calculated from the actual average cost system, is based on theoretical production. The inventory amount is only adjusted to actual at year-end. Therefore, Dillinger's day-to-day costs in their accounting system are based on theoretical weight. We agree with petitioners that costs and prices must be on the same weight basis to accurately calculate margins. In this case, the costs and prices are on the same weight basis (theoretical), so the petitioners' argument for BIA moot.

Comment 11: Petitioners argue that the Department should assign BIA to Dillinger's misreported product characteristics. As petitioners have previously pointed out and the Department recognized in its preliminary results, Dillinger has misreported non-prime products (Y-grades) as prime products. Petitioners argue that by including non-prime products within the same product specification as prime products, Dillinger has precluded the agency from comparing prime merchandise to prime merchandise in both markets. The Department's computer program excludes all home market sales of products with specifications that cover Y-grade merchandise. However, petitioners assert, by simply excluding all products with those particular specifications, the Department likely has excluded sales of prime merchandise as well. The petitioners argue that the exclusion of the home market control numbers (CONNUMHs) with these particular product specifications from the margin calculation program in the preliminary results, actually favors Dillinger by lowering its margin. According to petitioners, it was inappropriate to reward Dillinger for this error. The petitioners argue that when a respondent fails to provide the information requested, the Department must use BIA. When employing BIA, there should be an adverse assumption on the part of the Department unless special circumstances dictate otherwise. Petitioners assert that as BIA, all U.S. sales matched to the sale of a home market product in which the specification code is one which includes Y-grade products, should be assigned the higher of the highest, non-aberrant margin calculated on any individual transaction for this review or the 36.00 percent margin assigned to Dillinger in the investigation.

Respondent argues that the Department incorrectly assumed that Y-grade material contained both prime and non-prime merchandise. Dillinger informed the Department that non-prime merchandise sold in the home market should not be compared to prime material. In order to facilitate the Department's calculations, Dillinger reported all non-prime home market sales in a separate file. Thus, respondent contends, only prime Y-grade material is contained in Dillinger's primary home market sales file. Dillinger claims that it informed the verification team that Y-grade material was guaranteed for chemistry, dimensions and for tensile strength. According to respondent, no mill test certificate was issued for mechanical properties because none was requested by the customer. Dillinger did provide an analysis report to the customer. There is a published specification sheet for Y-grade material, indicating it is a prime product, made to order. Thus, respondent argues, while the chemical composition of the products in question did not meet their originally intended specifications, they were nevertheless prime material, meeting the requirements of the published Y-grade specifications. Generally speaking, according to Dillinger, it treats Y-grades no differently from any other prime grade (*i.e.,* A36). Dillinger claims that the verification team simply misinterpreted the facts. According to respondent, all sales reported as Y-grade specifications were treated by Dillinger as prime merchandise. Dillinger argues that its non-prime sales are sold in rail car lots containing mixed products (*e.g.,* carbon and alloy), without reference to type, specification, measurement, or grade. According to the respondent, there is nothing on the record (*e.g.,* verification report) to suggest that Y-grade material is considered to be non-prime material. Respondent asserts that the only record evidence (in the verification report) confirms that all non-prime material is sold in unmarked lots.

Department's Position: We disagree with respondent that Y-grades should be treated as prime merchandise. This is a question of methodology. Dillinger believes this to be prime material, since this is how it was reported and sold. We found at verification that there were ''Misfit Cast'' products, which were characterized as such because of an error in pouring. These were classified as Y-grades. The term ''Misfit Cast'' denotes non-prime merchandise. Since Dillinger did not provide enough information to refute this classification, we are continuing to treat Y-grades as non-prime merchandise. However, since Dillinger provided all requested information, and given the relatively small number of sales involved, we have determined simply to exclude from the home market sales database all specification codes containing Y-grade material. We do not agree with petitioners that our methodology (disregarding sales with specifications that contain Y-grades) actually favors Dillinger. Even though these specification codes contain some prime material, given the structure and hierarchy of the model match, these specification codes would not match to any U.S. sales. Therefore, the impact on the dumping margin is essentially non-existent.

Comment 12: The petitioners argue that the Department should use adverse BIA to account for Dillinger's unreported and unverified home market sales. Petitioners assert that there is no indication that Dillinger's 1994 financial statements were ever examined by the Department during the sales verification. Petitioners continue that the absence of such financial statements during the verification prevented the Department from tying home market sales for 11 of the 23 months for which home market sales were reported, to Dillinger's audited financial statements. The petitioners argue that it is not possible to conclude that all 1992 and 1994 sales in the home market were reported or that accurate information was provided for home market sales in 1992 and 1994 since neither years' sales were traced to their respective audited financial statements. Since Dillinger presented 1994 semi-annual financial statements to the cost verification team but not to the sales verification team, the petitioners assert that this indicates selective presentation of information, which casts further doubt on the completeness of Dillinger's home market sales database. If the Department erroneously concludes that Dillinger's reported home market sales are usable, petitioners argue that BIA should be used to account for unreported or unverified home market sales. Petitioners continue that any U.S. sale made in February or March 1993, or between November 1993 and July 1994, should be assigned as BIA the higher of the highest non-aberrant margin or the 36.00 percent margin from the investigation

Respondent contends that the Department verified the total quantity and value in both the U.S. and home markets for the entire period of review, 1993 and 1994. Dillinger provided all data requested by the Department during verification. Respondent argues that as the petitioners are well aware, the Department does not trace sales to the financial reports for each month in the period of review.

Department's Position: We disagree with petitioners. We consider total home market sales to be verified. Contrary to petitioners' assertion, we were not prevented from verifying certain months during the POR. Verification is a testing procedure and not every single item is examined (*see Monsanto Co. v. U.S.*, 698 F. Supp 275, 281 (CIT 1988)). In the present case, we traced 1993 totals to the audited financial statements and performed completeness checks on various months in 1993 and 1994. For example, we reviewed the general ledger, sales ledger, sales journal, and profit and loss statement from the general ledger for the months of October 1993, February 1994, and June 1994. Dillinger provided all requested information, and contrary to petitioners' assertion, we were not prevented from verifying any month of the period. Because no discrepancies were found, we consider total home market sales to be reported and verified.

Comment 13: Respondent notes that in comparing foreign market value (FMV) to end-user sales in the United States, the Department made an adjustment to FMV to compensate for the problem discovered at verification where Dillinger incorrectly coded the customer code and level of trade for six home market sales. Respondent argues that as a result, the Department used one level of trade in the home market and increased the price of all end-user sales—both those incorrectly coded as well as those correctly coded—by the level of the discount granted to service centers/distributors when compared to end-user sales in the U.S. Respondent argues that this methodology added the full amount of the discount to sales that were correctly coded. Instead, respondent proposes that a smaller adjustment be made to all end-user sales which would be calculated by applying to the discount the ratio of incorrectly coded sales to total sales examined.

Petitioners note that the Department's adjustment incorrectly assumes Dillinger misreported the home market customer level of trade in only one manner—by identifying service center sales as end-user sales. Petitioners note Dillinger also misreported end-user sales as service center sales. Because of Dillinger's improper reporting of level of trade and failure to adequately explain the Handlerrabatt and its commissions have precluded the Department from identifying the correct level of trade, the Department should assume all sales constituted sales to end-users and increase all home market prices by the amount of the discount.

Department's Position: We agree with petitioners that respondent's improper reporting of level of trade and its failure to report separately certain other adjustments have precluded the Department from identifying the correct level of trade. Since the only known difference in terms of sale to service centers/distributors and end-users was that service centers/distributors received a trader discount (Handlerrabatt), in matching home market sales to sales to U.S. end-users, we have adjusted FMV for this discount. We disagree with petitioners that this amount should be added to FMV for all home market sales matching to U.S. service center sales. The Department's methodology in effect treats all home market sales as service center sales. Therefore, there is no reason to increase the FMV for home market sales matched to U.S. service center sales. We also disagree with respondent that we should adjust FMV by a ratio applied to the discount, rather than the full discount. Given the pervasive errors in the respondent's database in the coding of the customer and the level of trade, it is appropriate to treat all home market sales as service center sales and increase FMV for all such home market sales matched to U.S. end-users by the full trader discount.

Comment 14: Respondent states that the sales verification report contained misstatements concerning discounts for home market sales and other expenses. The verification report states that the reported gross unit price is net of a market discount and trader's commission. The report also states that the reported gross unit price includes an end-user discount which is paid directly to the customer and is reported in the other expense field. Respondent states that all discounts granted to service centers/distributors, whether market, trader's or end-user, are subtracted by Dillinger during negotiation with the purchaser, and the invoice price is net of these discounts. Thus, according to respondent, the end-user discount is not found in the other expense field. Respondent states that if the verification report were correct, the other expense field would have an amount corresponding to discounts given to service centers for end-user sales.

Department's Position: We disagree with respondent. Respondent is confusing the end-user rebate with discounts given to service centers for end-user sales. In the verification report the term ''trader's commission'' refers to discounts given to service centers for end-user sales. This discount is netted out of reported gross unit price. However, end-user rebates—paid directly to the service center's customer—are included in reported gross unit price and are reported in the other expense field.

Comment 15: Petitioners state that the Department should correct Dillinger's reported home market gross unit prices to account for the conversion from actual to theoretical weight.

Respondent agrees that the Department should compare sales in each market on a same weight basis.

Department's Position: We agree that Dillinger's reported home market gross unit prices should be adjusted from actual to theoretical weight and have done so in these final results. Additionally, we have converted to a theoretical weight basis, other Dillinger adjustments which were reported on an actual weight basis (*see Analysis Memorandum,* November 6, 1995).

Comment 16: Petitioners argue that the Department should deny Dillinger's home market credit expenses because Dillinger reported payment due dates rather than the actual dates of payment. Should the Department erroneously grant Dillinger a downward adjustment for home market credit expenses, this adjustment should be limited to the smallest credit expense reported by Dillinger for any home market sale.

Respondent notes that the Department verified the actual dates of payment for Dillinger's home market sales. These dates, according to respondent, were substantially the same as those reported in the responses. Respondent argues that no change in methodology should be made to that used in the preliminary results.

Department's Position: We agree with respondent that we should not deny Dillinger's adjustment to home market price for credit expenses. However, contrary to Dillinger's assertion, at verification we found that Dillinger's actual payment dates were different than reported in that they generally were later than those reported. As such, Dillinger's actual expenses, on those sales that were verified, generally exceeded those that were claimed. Accordingly, we are allowing the claimed expense.

Comment 17: Petitioners argue that the Department should deny Dillinger's claimed adjustment for global credit and debit notes and other expenses. Petitioners state that Dillinger has not given a consistent explanation of these adjustments. Both global credits and debits are reported for certain transactions. According to petitioners, it appears that the other expenses field also includes global credit notes, which would result in double counting of global credit notes. Petitioners question whether gross unit price has already been adjusted for end-user discounts.

Respondent disputes petitioners' claims, noting that Dillinger gave the Department a detailed explanation of the global credit and debit notes at verification and provided the identity of all customers receiving these credits and debits. Respondent asserts that the Department verified how Dillinger allocated these notes on a customer-by-customer basis, and the Department correctly accounted for these notes in the preliminary results. Respondent explains that global credits and debits could have been granted for the same sales because a particular customer could have been granted credits on some sales and debits on other sales. With respect to the other expense variable, respondent notes that this variable is correctly described on page 31 of the sales verification report, which states that this field contains rebates, invoicing errors, or warranty expenses.

Department's Position: We disagree with petitioners. At verification we verified Dillinger's methodology for allocating global credits and debits on a customer-by-customer basis. We found that global credits and debits were accurately reported. We agree with respondent that global credits and debits could have been granted for the same sales because a particular customer could have been granted credits on some sales and debits on other sales. As noted in our verification report, we found at verification that gross unit price had not been adjusted for end-user discounts and this discount was reported in the other expense field. The other expense field does not include global credits or debits. Hence there is no double counting.

Comment 18: Petitioners state that the Department should recalculate Dillinger's overly inclusive and misallocated home market indirect selling expenses. According to petitioners, Dillinger included both their sales cost as well as those of Saarlux. Petitioners assert that this is different than the methodology used to calculate the U.S. indirect selling expenses. Petitioners continue that Dillinger reduced its costs to account for functions performed by Francosteel and Daval (Francosteel's parent and a commission agent on U.S. sales). Petitioners further assert that Dillinger did not provide an explanation for how it determined cost of manufacturing used to allocate U.S. indirect selling expenses. Because of the complete miscalculation of its home market indirect selling expenses, the Department should deny Dillinger any adjustment for home market selling expenses. If the Department determines to grant this adjustment, then at a minimum, the Department should assign the smallest reported home market selling expense for any sale to all home market sales.

Respondent states that it did not double count any home market indirect selling expenses. Dillinger argues that it did not artificially reduce any sales expenses attributable to U.S. sales. According to Dillinger, it simply did not incur many traditional selling expenses applicable to U.S. sales because those functions are performed by Daval and Francosteel. Dillinger asserts that it also does not incur all home market selling expenses because many of them are performed by Saarlux. Dillinger argues that it correctly calculated indirect selling expenses in both markets predicated on cost of manufacturing, and that this is confirmed in verification exhibits.

Department's Position: We agree with respondent. We found both home market and U.S. indirect selling expenses to be allocated on the basis of cost of manufacturing. The methodology used by Dillinger for calculating home market indirect selling expenses was reasonable and not overly inclusive. U.S. indirect selling expenses have not been used in the calculation of antidumping duty margins as we consider Dillinger's U.S. sales to be purchase price and there are no home market commissions to offset with U.S. indirect selling expenses. Therefore, issues relating to the use or calculation of U.S. indirect selling expenses are moot.

Comment 19: Petitioners state that the Department should deny the erroneous adjustment for inventory carrying costs it granted to Dillinger. Petitioners assert that Dillinger failed to provide any support for its method of calculating the number of days between the date of production and the date of shipment. Petitioners summarize that Dillinger has thus failed to demonstrate entitlement to this adjustment, and the Department should deny it.

Respondent argues that it provided a detailed explanation of how it derived inventory carrying costs at verification. According to the respondent, the Department accepted and verified that explanation.

Department's Position: We disagree with petitioners. At verification, Dillinger provided the Department with a copy of a submission estimating the number of days between the date of production and the date of shipment. These figures appeared reasonable at verification, and result in an extremely small adjustment for inventory carrying costs. We note that inventory carrying costs are included in indirect selling expenses. As stated above in the Department's position on question 18, we have not used U.S. indirect selling expenses in our calculations. We further note that home market indirect selling expenses are only included to the extent that they do not exceed U.S. commissions. As home market indirect selling expenses exceed U.S. commissions even if inventory carrying costs are not included, this issue is moot.

Comment 20: Petitioners argue that the Department should treat Dillinger's U.S. sales as exporter's sales price (ESP) transactions. According to petitioners, there is no documentary evidence that supports Dillinger's assertion that its related selling arm in the United States, Francosteel, is only a processor of sales-related documentation. Petitioners assert that Dillinger's sales through Francosteel do not meet the statutory definition of purchase price. The Department uses a three-part test to determine whether ESP or purchase price should be used to determine United States price (USP) when the sale is made prior to the date of importation. Petitioners argue that only the third factor in this test (whether the related selling agent in the U.S. acted only as a mere processor of sales-related documentation and a communications link with the unrelated U.S. buyers) directly addresses the question for whether the sales took place in a foreign country for exportation to the United States. Before the Department can make a finding that the related party is just a processor of documentation, there has to exist evidence in the record to support that conclusion. Petitioners assert that in this case, the Department only has Dillinger's assertion. Petitioners argue that there is nothing in the record that indicates that Francosteel communicated with Daval before it issued its confirmation of sale. Petitioners argue that the price at which the merchandise is sold to the unrelated purchaser is different from the price at which it was purchased from Daval. Petitioners assert that in *PQ Corp* v. *U.S.*, 652 F. Supp. 732 (CIT 1987), the court noted that this is a factor that supports a determination that the sale is an ESP transaction. Petitioners argue that Dillinger has the burden of producing the information that proves Francosteel is only a processor of sales related documentation, and it has not done so.

Petitioners further argue that Francosteel sells for its own account in the United States. According to petitioners, Francosteel's agreement with Daval demonstrates that Francosteel has undertaken to sell, in the United States, the products of a related party, and that it, Francosteel, not the unrelated purchaser, obtains those products through a purchase from Daval. Because the sale takes place in the United States between a party related to the foreign seller and an unrelated purchaser, the sale is clearly ESP. Petitioners assert that since Francosteel purchases the products from the foreign seller and the unrelated purchaser does not, the transaction falls outside of the purchase price definition.

Petitioners further argue that declarations made on Customs Form 7501 clearly indicate that Francosteel is the purchaser of the imported merchandise. Petitioners assert that given these declarations, this merchandise was apparently entered for appraisement by Dillinger under transaction value, the most common basis of determining Customs value. According to petitioners, transaction value is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States. Petitioners assert that this definition is largely the same as purchase price. Petitioners argue that given the similarity of the statutes, Dillinger's claim that its U.S. sales to the first unrelated purchaser should be treated as purchase price transactions is inconsistent with a claim that the merchandise should be appraised under transaction value at the price established by the Daval/Francosteel transaction.

Respondent asserts that the first unrelated customer purchases the merchandise from Dillinger, not Francosteel. Respondent argues that at the time of the order and order confirmation, Francosteel does not have title to the merchandise. According to respondent, Francosteel merely receives the order from the unrelated customer and forwards it to Dillinger for approval. Respondent further states that once Dillinger approves the order, it notifies Francosteel, and then Francosteel notifies the customer. Dillinger treats the date of sale as the date it enters the order confirmation into its system. According to respondent, only after the plate is produced does the contract between Daval and Francosteel become applicable. Respondent states that at this time the steel has already been sold to the first unrelated customer. Respondent asserts that Francosteel's agreement with Daval operates only from the time that Francosteel obtains the merchandise at the European port until it invoices the U.S. customer upon arrival at the U.S. port. Even if Francosteel took title, in *Outokumpu Copper Rolled Products AB* v. *U.S.*, 829 F. Sup. 1371 (CIT 1993), the Court held that where the subsidiary took title to the exported merchandise and paid customs duties, the sales were nevertheless properly classified as purchase price transactions.

The respondent further asserts that a related U.S. company can receive purchase orders directly from U.S. customers, send invoices directly to those customers, act as an importer of record and receive payment, and still be deemed to be a mere processor of documentation and a communication link (*see E.I. DuPont de Nemours & Co.* v. *U.S.*, 841 F. Supp. 1237 (CIT 1993)). Therefore, the Department should continue to treat U.S. sales as purchase price transactions.

Department's Position: We disagree with petitioners. The Department determined that purchase price, as defined in section 772 of the Tariff Act, was the appropriate basis for calculating USP. All sales were made through Francosteel, a related sales agent in the United States, to unrelated purchasers. Whenever sales are made prior to the date of importation through a related sales agent in the United States, we typically determine that purchase price is the most appropriate determinant of the USP based upon the following factors: 1) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; 2) direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and 3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. See *Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less than Fair Value,* 58 FR 68865, 68868 (December 29, 1993); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343, 50344 (September 27, 1993). In the present review, we found that: the essential terms of sale were set prior to importation by or on approval by Dillinger; the merchandise was shipped immediately to the customer upon importation into the United States, without being introduced into the inventory of the related shipping agent; direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise; the merchandise was not warehoused by Francosteel during the normal course of business; and the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Even if Francosteel temporarily takes title to the merchandise, it is not inventoried by them. The term ''inventory'', as it is commonly used in business, implies that the merchandise is in storage and is available for sale. We have determined that the subject merchandise that Francosteel imports (the merchandise is not physically warehoused by Francosteel during the normal course of business) is not generally available for sale. It is awaiting delivery to a specific customer (*see Stainless Steel Wire Rods from France).*

Although Francosteel takes title to the merchandise and participates in sales negotiations, we found at verification that it does not have the flexibility to set the price of the steel and only acts as a processor of sales-related documentation (*see Stainless Steel Wire Rods from France*). Furthermore the Court of International Trade found in *Independent Radionic Workers of America* v. *U.S.,* (Slip Op. 95–45, March 15, 1995 CIT), that while the respondent processed purchase orders, performed invoicing, collected payments, arranged U.S. transportation, and was the importer of record, these duties, while substantial, are not necessarily disqualifying of purchase price treatment.

For all of the above reasons, we are continuing to treat U.S. sales as purchase price sales.

Comment 21: Petitioners argue that the Department should apply BIA to the value of a discrepancy in Dillinger's reported U.S. sales for 1993 and its sales ledger information. Petitioners state that Dillinger underreported both the quantity and value of its U.S. sales.

Respondent counters that it explained at verification the double counting of one invoice. Respondent also states that the discrepancy in the value of U.S. sales is accounted for by expenses incurred by Francosteel which are not contained in Dillinger's books.

Department's Position: We agree with respondent. As Francosteel explained at verification, Dillinger only retained one entry for the same tonnage in its calculations of total volume and value, thinking that the second identical tonnage was a duplication. However, the same tonnage was reported on two separate invoices, and was properly reported in Dillinger's U.S. sales listing. This second ''duplicate'' invoice accounts for virtually all of the tonnage discrepancy. The difference in value is accounted for by expenses incurred by Francosteel.

Comment 22: Petitioners argue that the Department should apply BIA to the value of all 1994 Francosteel imports, as Dillinger failed to demonstrate the completeness of its 1994 U.S. sales at verification.

Respondent states that petitioners' assertion is without any foundation on the record. Nowhere in the verification report does the Department state that any material data was not verified. Accordingly, the Department should continue to use Dillinger's 1994 sales data.

Department's Position: We agree with respondent. As discussed above, verification is a testing procedure and not every single item need be examined. *See Monsanto Co.* v. *U.S.,* 698 F. Supp 275, 281 (CIT 1988). We consider total U.S. sales to be verified. We traced 1993 totals to the audited financial statements and performed completeness tests on various months in 1993 and 1994. For example, we randomly selected sales from Francosteel's invoice registers for the months of August 1993 and August 1994 to determine if products were properly included and/or excluded from Dillinger's U.S. sales listing. Because no discrepancies were found, we consider total U.S. sales to be reported and verified.

Comment 23: Petitioners claim that the Department should apply BIA to unreported sales made by Berg Steel Pipe (Berg). Petitioners state that they gave the Department information indicating that Dillinger failed to report sales of subject merchandise (pipe) by Berg Steel Pipe, a related party to Dillinger. According to petitioners, the Department did not confirm whether there were any sales of subject merchandise made by Berg to unrelated customers in the United States during the POR. Petitioners argue that simply because Dillinger stated that Berg did not purchase subject merchandise from it during the POR does not foreclose the possibility that Berg already had subject merchandise in stock which it could have sold during the POR. Petitioners argue that furthermore, Dillinger permitted the Department to select invoices only from a computer-generated listing at verification, rather than an actual sales journal, and did not demonstrate that the computer program which generated the listing was outputting appropriate and complete information. Publicly available data shows that Francosteel imported and shipped steel plate to Panama City, Florida, where Berg is located, during the POR.

Respondent states that the Department verified that all sales and entries in the POR by Dillinger to Berg were of non-scope merchandise. Respondent asserts that assuming, arguendo, that Berg had sales of scope merchandise in the POR which were entered prior to the POR, the petitioners' point is moot. Respondent argues that entries prior to the POR are not subject to this review and have already been liquidated in any case.

Department's Position: We agree with respondent. While it is true that Dillinger sold plate to Berg during the POR, there is no evidence that any of this steel was subject merchandise. To establish whether any sales of subject merchandise were made to Berg, we examined random invoices selected from a company computer report listing all sales to Berg at verification. This report was generated from Dillinger's normal sales accounting system. The sales invoices we examined described the plate sold to Berg as X–70 grade steel, which is outside the scope of this review. We reviewed mill certificates for certain invoices, confirming that this steel was X–70 grade and the strength levels were above 70,000 pounds per square inch. We found this to be sufficient proof that Dillinger did not sell subject merchandise to Berg during the POR.

Comment 24: Petitioners state that the Department should use BIA for foreign brokerage and handling. Because there has been no demonstration of arm's-length transactions between Dillinger and the related company that provided its foreign brokerage and handling services, the Department should apply adverse BIA.

Respondent notes that the Department verified that the brokerage and handling fees charged by this related company were at arm's-length.

Department's Position: We disagree with petitioners. As noted above, verification is a testing procedure and not every single item need be examined. *See Monsanto Co. v. U.S.,* 698 F. Supp 275, 281 (CIT 1988). We performed an arm's-length test on one related party (a barge company) and found that prices for comparable services charged by the unrelated party were less than those charged by the related party. We also found that another related party providing services to Dillinger was profitable. We have no reason to believe that foreign brokerage and handling were provided on other than an arm's length basis and we are allowing this adjustment.

Comment 25: Petitioners argue that the Department should use BIA for ocean freight. They claim that there has been no demonstration of arm's-length transactions between Dillinger and the related company that provided ocean transportation services.

Respondent notes that the related party does not own the ships which carry the plates to the United States; this related party simply arranges transportation. Respondent argues that none of the ocean carriers are related to Dillinger, and the payments made for ocean freight were made to unrelated parties.

Department's Position: We agree with respondent. While ocean freight is arranged by a related party, the actual ocean carriers are unrelated parties. As such, there is no need to perform an arm's length test because the actual ocean freight is not provided by a related party.

Comment 26: Petitioners state that the Department should use BIA for foreign inland freight. First, the petitioners argue, Dillinger reported related-party foreign inland freight charges, but failed to demonstrate that they were incurred at arm's-length prices. According to petitioners, Dillinger attempted to demonstrate its foreign inland freight expenses were at arm's-length by providing information at verification concerning a transaction between Dillinger and an unrelated freight company. However, the petitioners assert, the verification report does not indicate the product shipped, the route, or the basis for calculating the rate. Moreover, the petitioners argue, the invoices examined were for a different period than those to its related party. The petitioners argue that Dillinger also claimed its transactions were at arm's-length based on transportation charges between this related party and an unrelated customer. However, the petitioners assert, the supporting documentation provided is merely a translation of an agreement, with no actual original documentation. The petitioners argue that the verification report does not indicate that this information was ever verified. According to petitioners, verification documentation also reveals that Dillinger often incurred foreign inland freight expenses through another related company; Dillinger did not attempt to demonstrate those transactions were at arm's-length. Second, the petitioners assert, the Department's program fails to correct the weight basis used for foreign inland freight. The petitioners argue that Dillinger incorrectly converted a theoretical weight figure to an actual weight figure, even though U.S. sales were reported on a theoretical weight basis. Third, the petitioners assert, Dillinger has failed to include costs associated with loading, unloading, and transportation of the merchandise from Dillinger's factory to the port of Dillingen.

Respondent counters that the verification report accurately portrays the arm's-length nature of the foreign inland freight expenses. According to respondent, the documents inspected by the verification team completely satisfied the Department. The respondent argues that concerning the weight basis of the shipped plate, the Department is confused on the facts. Respondent states that the barge company bills Dillinger on an actual weight basis. Respondent argues that it converted this figure to a theoretical weight basis for purposes of its responses.

Department's Position: We disagree with petitioners. Verification is a testing procedure and not every single item need be examined. *See Monsanto Co.* v. *U.S.*, 698 F. Supp 275, 281 (CIT 1988). We performed an arm's-length test on one related party (a barge company) and found that foreign inland freight charges charged by an unrelated party were less than those charged by the related party. In addition to the checks performed at verification, we have compared the prices charged by this unrelated party to reported foreign inland freight expenses for 1994 U.S. sales. We again found the related expenses to be greater than the unrelated charges. Thus, we believe Dillinger's foreign brokerage and handling expenses to be at arm's length. We agree with respondent that verification exhibits demonstrate that these expenses were reported on a theoretical weight basis. Regarding the costs associated with loading, unloading, and transportation of the merchandise from Dillinger's factory to the port, we found (on the basis of the information submitted and verification findings) these expenses to be included in COP/CV. In Dillinger's accounting system, these expenses are embedded in the cost of production and are not easily separated. These expenses are incurred on both home market and U.S. sales. Also, because of the very short distance from the plant to port, these expenses are extremely minor. Therefore, we are allowing Dillinger's treatment of these loading, unloading, and transportation expenses.

Comment 27: Petitioners state that the Department should reject Dillinger's reported U.S. short-term interest rate. In determining whether to use loans obtained from related parties to calculate credit and inventory carrying costs, the Department examines the terms of these loans to determine whether they were made at arm's-length interest rates. When a respondent fails or is unable to demonstrate that such loans are at arm's-length, the Department excludes these loans from its calculation of interest rate. According to the petitioners, Dillinger did not demonstrate this and failed to exclude these related party interest rates from the weighted-average interest rate used to calculate credit and inventory carrying costs. Petitioners argue that verification exhibits demonstrate that the related party interest rates were not arm's-length. Petitioners assert that there is no indication that Dillinger attempted to demonstrate the reported interest rates reflected all of Francosteel's borrowing during the POR. Petitioners argue that there is no indication of any review of Francosteel's accounts to verify whether Francosteel used other sources of financing. Since Dillinger did not establish the arm's length nature of its related party borrowings or demonstrate that all borrowings were reported, its reported U.S. short-term interest rate should be denied altogether. The Department should use the U.S. prime lending rate or, at a minimum, use the weighted-average short-term interest rate reported by Dillinger calculated without the related party interest rates.

Respondent argues that the Department verified that loans from related parties were at arm's length by comparing them to those obtained from unrelated parties. Therefore, no change should be made to the Department's methodology.

Department's Position: During verification, we examined Francosteel's accounts to determine that all short-term borrowings had been reported for use in the short-term interest rate. To accomplish this, we inquired about all interest expenses on Francosteel's books and their sources. We were satisfied that all borrowings had been reported. We disagree with petitioners in part in that some of the related party loans are considered to be arm's-length when compared for contemporaneous periods. That is, we compared the loan from a related party to those from unrelated parties, looking at when they were made. Some of the related party loans were found to have rates at or above those of unrelated parties, using time and term as the criteria. Accordingly, loans from related parties whose loans were below arm's-length were excluded from the interest rate calculation for purposes of these final results (in the preliminary results, all loans from related parties had been included in the calculations).

Comment 28: Petitioners state that the Department should apply BIA to an unreported U.S. sale. Petitioners state that the Department's examination of one observation at verification revealed the amount invoiced to the U.S. customer was less than the total amount appearing on the bill of lading. Petitioners argue that although this sale should be included in Dillinger's sales listing, the verification report provides no indication the sales listing was examined to verify that the sale had been reported, nor does it indicate any follow-through during verification to determine similar discrepancies. Therefore, the Department should presume the difference is caused by a missing sale and should apply total BIA to the value of that sale.

Respondent notes that sales to one end user were made each time that customer released tonnage from its inventory. Respondent asserts that all tonnage contained in the bill of lading is accounted for in the observations reported to the Department, and there are no unreported U.S. sales.

Department's Position: We agree with respondent. In verifying the calculation of U.S. duty on the observation in question, we examined the total volume on the entry and verified it was totally reported in Dillinger's submissions across a number of other observations. Therefore, there is no missing U.S. sale.

Comment 29: Petitioners argue that the Department should adjust its program to account for understated U.S. commissions. Petitioners assert that the Department correctly treated Dillinger's U.S. commissions as a direct selling expense. Petitioners argue that although the Department found at verification that some of the reported commissions were understated, the Department's program fails to adjust for this understatement. As BIA, the Department should increase all commissions by the average difference between Dillinger's reported commission and its actual commission on these sales.

Respondent agrees that the Department found a discrepancy in U.S. sales commissions for some sales, but points out that these discrepancies are *de minimis.* If the Department makes a correction, it should only be for the three sales in question.

Department's Position: After further examination of U.S. commissions, we have determined that this expense has been correctly reported. The sales referred to in the verification report include multiple observations for each sale. We have found that taking the total weighted-average of all the U.S. commissions corresponding to all observations on a given invoice results in the amount described in the verification report as the correct value for U.S. commissions (*see Analysis Memorandum,* November 6, 1995).

Comment 30: Petitioners argue that the Department should adjust U.S. price for warehousing expenses. Petitioners assert that although the record indicates that Dillinger incurred warehousing costs for its U.S. sales, Dillinger failed to report these expenses. The Department should make an adjustment to USP to account for the cost of warehousing. The Department should use, as BIA for warehousing expenses, data provided in Francosteel's financial statements.

Respondent argues that the Department verified that Francosteel incurred no warehousing expenses applicable to subject merchandise in the period of review; therefore no adjustment is necessary. According to respondent, warehousing in Francosteel's accounting documents is merely an accounting term, and not a reference to a physical warehouse.

Department's Position: We agree with the respondent. We extensively examined this topic at verification and found that Francosteel did not physically inventory, *i.e.,* warehouse, subject merchandise during the POR (as discussed in the Francosteel verification report). Consequently it did not incur any warehousing costs related to subject merchandise during the POR.

Comment 31: Petitioners argue that the Department must ensure that the value-added tax (VAT) amount added to USP is no more than the VAT amount added to/included in FMV. Petitioners assert that the Department neglected to adhere to the instructions of the CIT in *Federal-Mogul* v. *U.S.*, 862 F. Supp. 384, 394–95 (CIT 1994), requiring the Department to impose a cap on the VAT adjustment made to USP. Accordingly, the Department should ensure that the VAT amount added to USP is, in every instance, no greater than the VAT amount which is added to the FMV to which USP is being compared. The petitioners assert that the deposit rate will be affected by an unwarranted increase in USP caused by the Department's failure to apply a VAT cap.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Final Results of Review

As a result of our review, we have determined that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
AG der Dillinger Huttenwerke.	2/4/93–7/31/94	1.42

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 36.00 percent. This is the ‘‘all others’’ rate from the LTFV investigation. *See Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from Germany,* 58 FR 44170 (August 19, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

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

Dated: March 20, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–7464 Filed 3–27–96; 8:45 am]

BILLING CODE 3510–DS–P

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 21, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Austria	European Union (EU) Restitution Payments	33.1¢/lb.	33.1¢/lb.
Belgium	EU Restitution Payments	32.1¢/lb.	32.1¢/lb.