DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION, CONTACT: Maureen McPhillips at 202–482–0193 for CSN, Barbara Chaves at 202–482–0414 or Samantha Denenberg at 202–482–1386 for USIMINAS/COSIPA, or Linda Ludwig at 202–482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Final Determination

We determine that certain hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on February 19, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 8299 (Feb. 19, 1999) (Preliminary Determination). Since the publication of the Preliminary Determination the following events have occurred:

The respondents in this investigation: Companhia Siderurgica Nacional (CSN); Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS); and Companhia Siderurgica Paulista (COSIPA) requested postponement of the final determination in accordance with Section 735(a)(2) of the Act on February 2, 1999. Accordingly, we postponed the final determination in this investigation on February 18, 1999 for 30 days. See Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 9475 (February 26, 1999).

The Department verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of CSN's responses on March 8 through March 12, 1999. The Department verified section D (Cost) of CSN's response on March 15 through March 19, 1999. These verifications were performed at CSN's production facility in Volta Redonda. See Memorandum to the File; ''Sales Verification Report of Companhia Siderurgica Nacional (CSN),'' April 7, 1999, (CSN's Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data—CSN,'' April 7, 1999, (CSN's Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

The Department verified sections A–C of USIMINAS' responses on March 15 through March 20, 1999 at USIMINAS' corporate headquarters in Belo Horizonte and its production facility in Ipatinga, Brazil. The Department verified section D of USIMINAS' response on March 22 through March 26, 1999 at USIMINAS'' production facility in Ipatinga, Brazil. See Memorandum For the File; ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS),'' April 9, 1999 (USIMINAS' Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data—USIMINAS,'' April 9, 1999 (USIMINAS' Cost Verification Report).

The Department verified section D of COSIPA's response on March 15 through March 19, 1999 at COSIPA's production facility in Cubatão, Brazil. The Department verified sections A–C of COSIPA's responses on March 22 through March 27, 1999 at COSIPA's production facility in Cubatão, Brazil. See Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Submissions of Companhia Siderurgica Paulista,'' April 8, 1999 (COSIPA's Cost Verification Report) and Memorandum For the File; ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Companhia Siderurgica Paulista (COSIPA),'' April 9, 1999 (COSIPA's Sales Verification Report).

On March 22, 1999, CSN, USIMINAS, and COSIPA (respondents) requested a public hearing in this case. California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, Inc., IPSCO Steel Inc., Steel Dynamics, Inc., Weirton Steel Corporation, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (petitioners) also requested a public hearing on March 22, 1999. On April 16, 1999, petitioners and respondents in this investigation filed case briefs. We received rebuttal briefs from petitioners and respondents on April 26, 1999. On April 22, 1999, the Department sent a request to USIMINAS and COSIPA to report further information identified at the verifications. The Department received this information on April 28, 1999.

In addition, on April 15, 1999, General Motors Corporation (''GM'') requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, the petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. For a more detailed discussion of scope issues, please see Scope Amendments Memorandum (April 28, 1999).

On May 5, 1999, the respondents and counsel for petitioners withdrew requests for a hearing, and therefore, there was no hearing for in this investigation. On, May 6, 1999, the Department published Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil, 64 FR 24321, further extending the deadline for this investigation.

Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10—0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.
Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm ^{2} and 640 N/mm ^{2} and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm ^{2} and 690 N/mm ^{2} and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1997 through June 30, 1998.

Facts Available

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

The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong. 2nd Sess. (1994), at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' Final Rule, 62 FR at 27340. The statute notes, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

CSN

We are applying adverse facts available where the criteria laid out in section 776(a)(2) of the Act are present. For this final determination, we have applied facts available to account for those unreported U.S. sales where the nota fiscal date—the date of sale—was within the POI but the commercial invoice date (the date of sale reported by CSN) fell outside the POI. Please see Comment 5 for a more detailed explanation of this issue.

USIMINAS/COSIPA

In March, 1999, the Department conducted verifications of USIMINAS and COSIPA and was unable to verify various issues. As noted in USIMINAS'' Sales Verification Report, COSIPA's Sales Verification Report, and the respective Cost Verification Reports, respondents were either unprepared, unwilling, or unable to review certain issues at the verifications. When the material remained unverified, but respondents exhibited cooperation in supplying at least a basic level of information, the Department applied facts available in accordance with section 776(a) of the Act. This was the case in the Department's application of facts available for USIMINAS'' costs. USIMINAS deviated from its normal allocation system in reporting its product-specific costs. As a result, it failed to pick up all costs captured in its financial accounting records. As facts available, the Department adjusted USIMINAS'' reported costs to coincide with its normal accounting records. See Comment 47. The Department also used facts otherwise available in its determination of critical circumstances. See the Critical Circumstances section below.

In several other instances, the respondent failed to cooperate to the best of its ability. In these cases the Department asked repeatedly to cover certain issues, but respondents declined and they remained outstanding at the end of verification. Therefore, in accordance with section 776(b) of the Act, we have determined that adverse inferences are warranted for USIMINAS'' unreported U.S. sales where the nota fiscal date—the date of sale—was within the POI but the commercial invoice date (the date of sale reported by USIMINAS) fell outside the POI. See Comment 19. We have also determined that adverse inferences are warranted for the following items: downstream sales data, USIMINAS' home market inland freight, USIMINAS' U.S. inland freight, USIMINAS' warranty expense, COSIPA's home market inland freight, COSIPA's brokerage and handling expenses, COSIPA's packing, and USIMINAS' failure to report its affiliated supplier's actual cost of production (COP),. See Comments 18, 25, 26, 30, 34, 35, 40, and 49. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309, 30310 (June 14, 1996).

Critical Circumstances

In our preliminary determination, the Department found that there was no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil. In this final determination, the Department finds the same to be true. In accordance with section 735(a)(3) of the Act, if a petitioner alleges critical circumstances, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As in the Preliminary Determination, the Department finds that the first criterion has been met since Mexico has an antidumping duty order on hot-rolled steel from Brazil. This shows a history of dumping and material injury by reason of dumped imports of the subject merchandise. To determine whether the second criterion is met, *i.e.* whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for at least three months immediately preceding and following the filing of the petition. See 19 CFR 351.206(i). The Department, therefore, requested on February 9, 1999, that respondents submit monthly U.S. shipment data from January 1997 through January 1999. COSIPA submitted this data on February 19, 1999; USIMINAS on March 1, 1999; and CSN on February 22, 1999. In the Department's verification outlines and at verification, the Department requested that respondents demonstrate their methodology in reporting the monthly U.S. shipment data. CSN's monthly shipment data was verified, but USIMINAS and COSIPA's was not. See USIMINAS' Sales Verification Report, page 59 and COSIPA's Sales Verification Report, page 45.

Pursuant to 19 CFR 351.206(h)(2), the Department will consider an increase of 15 % or more in the imports of the subject merchandise over the relevant period to be massive. CSN's verified data demonstrates that the threshold needed to find critical circumstances was not met since a comparison of shipments immediately preceding and following the filing of the petition did not reflect an increase of more than 15%. See Exhibit 5 of CSN's February 22, 1999 submission of monthly U.S. shipment data. We were unable to verify USIMINAS/COSIPA's shipment data, and therefore, are not using it in making our final critical circumstances determination. However, based on information available to the Department including official Census statistics, verified data for CSN, and the fact that CSN, USIMINAS, and COSIPA are the only known producers/exporters of the subject merchandise to the United States, we have determined that imports of the subject merchandise produced by USIMINAS/COSIPA did not increase by 15%. See Memorandum to the File: ''Analysis for Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS) / Companhia Siderurgica Paulista (COSIPA) for the Final Determination of the Antidumping Duty Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil for the period July 1, 1997 through June 30, 1998,'' July 6, 1999, (USIMINAS/ COSIPA's Analysis Memo). Therefore, the threshold for critical circumstances was not met.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from Brazil to the United States were made at LTFV, we compared export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average export prices for comparison to weighted-average normal values or constructed values.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Investigation'' section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Affiliated Respondents

In our preliminary determination, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Collapsing Memorandum to Joseph A. Spetrini from Richard Weible, December 22, 1998 (Collapsing Memo). For the purpose of this investigation, we continue to consider these two respondents as a single entity. See Comment 17 below for a further discussion of this issue. Petitioners also argue that all three respondents are affiliated and should be collapsed. For this final determination, the Department determined that there is insufficient evidence on the record to warrant a collapsing of all three respondents. See Comment 1 below for a further discussion of this issue. However, should this investigation result in an antidumping duty order, we intend to scrutinize this issue in any subsequent segment of this proceeding.

Level of Trade

CSN

In our preliminary determination we agreed with CSN that one level of trade (LOT) existed for CSN in the home market. Furthermore, we agreed with CSN that its EP sales in the United States were at a single LOT, and that CSN's sales in both markets were at the same LOT (see Preliminary Determination, 64 FR 8302). During verification, in the course of reviewing

CSN's sales process, accounting system, and sales documentation for both home market and U.S. customers, we found no evidence of different selling functions based on customer category, distribution channels, or market (see CSN's Sales Verification Report, p. 15).

No party to this investigation commented on this issue relative to CSN and the Department has no new evidence that would warrant altering our preliminary determination. Therefore, as in the preliminary determination, we find that CSN's sales within or between markets were made at the same LOT and, therefore, a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate.

USIMINAS/COSIPA

In our preliminary determination, the Department found that two LOTs existed in the home market, one to affiliated resellers and the other to all other types of customers which we termed mill direct sales. In the U.S. market, the Department determined that there was one LOT, and that the U.S. LOT was equivalent to all types of home market sales except those to affiliated resellers. However, we were unable to verify USIMINAS/COSIPA's LOT claims. Therefore, for this final determination we are considering all U.S. and home market sales to be at the same LOT. See Comment 18 below.

Export Price

The Department based its calculations on EP in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. The Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We calculated EP for CSN and USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination, except as noted in the Comment section below. See Memorandum to the File: ''Analysis for Companhia Siderurgica Nacional (CSN) for the Final Results of the Antidumping Duty Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil for the period July 1, 1997 through June 30, 1998,'' (July 6, 1999), (CSN's Analysis Memo), and USIMINAS/COSIPA's Analysis Memo.

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. As CSN's and USIMINAS/COSIPA's aggregate volumes of home market sales of the foreign like product were greater than five percent of these companies' aggregate volumes of U.S. sales of the subject merchandise, we determined that the home market was viable for both CSN and USIMINAS/COSIPA. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 % or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that sales to that affiliated customer were made at arm's length prices and, therefore, we excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993).

Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Petitioners provided reasonable grounds to believe or suspect that CSN and USIMINAS/COSIPA's sales of the foreign like product under consideration for determining NV may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by the respondents in this investigation.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of respondents' cost of materials, fabrication, general expenses, and packing costs. We relied on CSN's and USIMINAS/COSIPA's submitted COP, except in the following specific instances:

CSN

1. We revised COP and CV to include the identified reconciliation items and minor corrections, presented on the first day of verification, which were not included in CSN's reported costs. See Comment 43.

2. We revised CSN's selling, general and administrative (SG&A) expense rate in order to include the net exchange loss and the amortization of goodwill. See Comment 44.

3. We recalculated CSN's financial expense rate to include certain net exchange losses which were financial in nature. We also revised the long-term financial income amount based on consolidated statement figures instead of company-specific figures. See Comment 44.

USIMINAS

1. We adjusted the reported cost of manufacturing (COM) for each CONNUM to coincide with its normal accounting records. See Comment 47.

2. Where different COM's were reported for the same CONNUM, we used the higher amount. See Comment 48.

3. We adjusted the transfer price for iron ore and coal obtained from an affiliated supplier in accordance with the major input rule. See Comment 49.

4. We computed the interest income offset using data from the USIMINAS unconsolidated entity. See Comment 51.

5. We adjusted the G&A rate calculation to exclude those expenses which directly relate to revenue received from non-operational activities. See Comment 52.

COSIPA

1. We revised the cost of iron ore to reflect the market value of this input. See Comment 54.

2. We revised COSIPA's G&A expense rate calculation to reflect amounts from the 1997 financial statements and disallowed income resulting from rescheduling of ICMS payments to offset general and administrative expenses. See Comment 55.

3. We revised the interest expense rate to use USIMINAS's revised rate. See Comment 51.

Price-to-Price Comparisons

CSN

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on CSN's sales to unaffiliated home market customers or sales to affiliated customers that we determined to be at arm's length. We made adjustments for U.S. packing expenses. We made deductions, where appropriate, for movement expenses, taxes, and home market packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made circumstance-of-sale (COS) adjustments for warranty expenses, credit, and interest revenue in accordance with section 773(a)(6)(C)(iii) of the Act.

USIMINAS/COSIPA

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on USIMINAS/COSIPA's sales to unaffiliated home market customers or prices to affiliated customers that we determined to be at arm's length prices. We made adjustments for selling expenses, discounts, movement expenses, packing and taxes in accordance with section 773(a)(6) of the Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made COS adjustments for warranty expenses, credit, and interest revenue in accordance with section 773(a)(6)(C)(iii) of the Act.

Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. See section 773(e)(1). In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Brazil. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the ''Cost of Production Analysis'' section above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made COS adjustments by deducting home market direct selling expenses from NV and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

I. Sales Issues pertaining to all three respondents

Comment 1: Whether to collapse USIMINAS/COSIPA with CSN. Petitioners assert that in addition to collapsing USIMINAS and COSIPA, all of the respondents should be collapsed into a single entity for purposes of this investigation. They argue that CSN and USIMINAS/COSIPA produce the same products, share common directors, and have intertwined operations, all of which create the potential for the manipulation of price or production. Referring to the Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A–351–828 (March 11, 1999) (Collapsing Comments), petitioners argue that the linkages between all three respondents clearly satisfy the affiliation and collapsing criteria set out in the Department's regulations.

Petitioners cite to the definition of affiliated parties in section 771(33) of the Act. Petitioners maintain that CSN, in conjunction with Companhia Vale do Rio Doce (CVRD) and other affiliated companies, or the ''CSN/CVRD group,'' is affiliated with USIMINAS/COSIPA as evidenced by (1) the CSN/CVRD group sharing equity and managerial relationships which petitioners claim establish an integrated unit under the control of Benjamin Steinbruch and his family; (2) the ''CSN/CVRD group'' sharing board members with USIMINAS; and (3) the CSN/CVRD group holding significant equity interest in USIMINAS.

Petitioners first argue that CSN and CVRD should be treated as a single entity, and that this ''CSN/CVRD'' entity is affiliated with USIMINAS by virtue of the alleged control of both by Mr. Steinbruch. In support of this theory, petitioners note that Mr. Steinbruch is the head of the Vicunha Group, or Steinbruch family business, which owns 14.1% of CSN through Textilia. Textilia is a member of CSN's shareholders' agreement (a group of minority shareholders which vote as a block and together control 64.3% of the voting shares) and has two representatives on CSN's board, including Mr. Steinbruch. Mr. Steinbruch is chairman of both CSN and CVRD's boards, and petitioners cite Business Week and Financial Times articles referring to Mr. Steinbruch as controlling the ''CSN/CVRD group.'' In fact, petitioners claim that CSN's stake in CVRD through its 31% ownership of Valepar, S.A. (Valepar) (which owns 27% of CVRD) and CVRD's stake in CSN through its 96.84% ownership of Vale do Rio Doce Navegacao (Docenave)(which, in turn, owns 25.2% of CSN), effectively makes CSN and CVRD a single business entity. In quoting the Financial Times, petitioners state that Mr. Steinbruch's reorganization of CVRD strengthened his control of this company beyond what CSN's ownership would imply.

Petitioners believe that the directors and officers shared by CVRD and Valepar and by CSN and CVRD further solidify Mr. Steinbruch's control over the companies, and ''provide a ready means for the companies to act in concert (*e.g.*, planning and pricing decisions).'' Petitioners point out that Gabriel Stoliar, a director of CVRD, sits on CSN's and USIMINAS'' board of directors. On the subject of board members, petitioners take issue with the different explanations by USIMINAS and CSN of the function of a board of directors. They state that USIMINAS compares the function of the ''Administrative Council'' to a U.S. board of directors and the ''Board of Directors'' to a company's management, while CSN makes no such distinction. Therefore, when petitioners use the term ''Board of Directors'' they intend it to mean ''the entity controlling the company.''

Second, petitioners claim that because of CSN's equity interest in CVRD, which in turn owns a 23% interest in USIMINAS, CSN has more than 5% of the outstanding stock in USIMINAS. They believe that this factor demonstrates CSN's ability to exercise restraint or direction over USIMINAS and is sufficient grounds for finding affiliation between CSN and USIMINAS.

Third, petitioners argue that CSN and USIMINAS are affiliated based on common ties to the Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) (employee pension fund of the Bank of Brazil). They believe that CSN has a close relationship with Previ and acts in concert with it to acquire and control various companies, including USIMINAS. They argue that Previ is not a passive investor of pension funds but an important source of capital for Mr. Steinbruch's investments. Petitioners state that Previ is a member of CSN's shareholders agreement, directly owns 13.8% of the company, and together with CSN, submitted the winning bid in the privatization of CVRD. According to petitioners, Previ and CSN together maintain 30 or 38% of the outstanding voting stock of CVRD. They also point out that Previ is the third largest shareholder in USIMINAS, and while not a member of its shareholders' agreement, has two employees from the Banco do Brasil on USIMINAS' Board of Directors. Petitioners argue that Previ's ownership in CSN, CVRD, and USIMINAS and its joint interests and activities with CSN demonstrate that Previ and CSN together are affiliated with USIMINAS.

Having explained their arguments for affiliation, petitioners next argue that CSN's legal, organizational, and operational ties with USIMINAS/COSIPA also satisfy the Department's other criteria for collapsing. Petitioners note that, pursuant to § 351.401(f)(1) of the Department's regulations, affiliated producers will be treated as a single entity if (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.

Petitioners believe that CSN and USIMINAS/COSIPA are capable of easily shifting production of identical or similar products among themselves, as evidenced by similar production facilities and similar products. In discussing the ''significant potential'' criterion, petitioners quote § 351.401(f)(2), which explains that the Department examines the following factors, among others: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Petitioners cite cases (see FAG Kugelfischer v. United States, 932 F. Supp. 315 (CIT 1996); Nihon Cement Co., Ltd. v. United States, 17 CIT 400 (1993); Queen's Flowers de Colombia, et al., v. United States, 981 F. Supp. 617 (CIT 1997), in which the U.S. Court of International Trade (the Court) upheld the Department's articulation of these collapsing criteria. Petitioners believe that the central issue according to the Court is ''whether parties are sufficiently related to present the possibility of price manipulation.'' Petitioners believe there is significant potential for manipulation of price or production between CSN and USIMINAS/COSIPA. Petitioners state that this potential stems from the high level of common ownership, common members on the boards of directors, and intertwined operations, and is reflected in the ongoing price fixing investigation of CSN, USIMINAS and COSIPA by the Brazilian government (see USIMINAS' Sales Verification Report, page 9 and COSIPA's Sales Verification Report, pages 5–6 for a discussion of the ongoing price-fixing investigation).

With respect to intertwined operations, petitioners cite several factors. They argue that there is a connection between USIMINAS and CSN through a third company in the United States. CSN is affiliated with this third company by way of two companies in which it has equity. USIMINAS also has a relationship with this third U.S. company through a commercial agreement. Petitioners believe there is potential for CSN and USIMINAS to use this common tie to manipulate U.S. prices. Additionally, petitioners believe that respondents' joint purchase of coal, common ownership in MRS Logistica (a railroad transport company), and a common source of inputs demonstrate operational links. Petitioners include iron ore among the common inputs, arguing that just as USIMINAS/COSIPA purchases iron ore from CVRD, a statement by Mr. Steinbruch in ''CSN Denies Cartel Charges,'' *American Metal Market* (March 1, 1999) indicates that CSN does so as well.

In conclusion, petitioners argue that respondents' nearly identical production facilities and products, common equity ownership, shared board members, the on-going price-fixing investigation, and intertwined operations all indicate that there is a significant potential for price or production manipulation. Petitioners also believe that these factors are similar to those relied upon in prior determinations such as Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Columbia, 61 FR 42833, 42853, (August 19, 1996), (Fresh Cut Flowers) and Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13151 (March 17, 1999) and Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453–54 (July 29, 1998) in which the Department collapsed respondents.

While respondents did not address the issue of collapsing CSN with USIMINAS/COSIPA, they did argue that USIMINAS and COSIPA should not be collapsed for this investigation. See Comment 17.

Department's Position: The Department has determined that USIMINAS and COSIPA should be collapsed for margin calculation purposes (see Comment 17). To collapse CSN with USIMINAS/COSIPA, as petitioners suggest, requires that we first find that CSN and USIMINAS/COSIPA are affiliated parties within the meaning of section 771(33) of the Act. Because we find that USIMINAS/COSIPA is not affiliated with CSN, we have not collapsed these entities for purposes of this investigation.

The issue of whether CSN is affiliated with USIMINAS/COSIPA, is governed by section 771(33) of the Act, which deems the following persons to be affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization (C) partners; (D) employer and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of this provision, a person controls another person if the person is in a position to exercise restraint or direction over the other person. Petitioners arguments for finding USIMINAS/COSIPA and CSN affiliated appear to be based on subparagraphs (E), (F) and (G) of section 771(33) of the Act.

Pursuant to section 771(33)(E), the Department examined CSN's ownership interest, direct or indirect, in USIMINAS (USIMINAS/COSIPA does not own or control any shares in CSN). CSN owns a 31% equity interest in

Valepar, which owns 27%, 42%, or 52% of CVRD, depending on which of the sources submitted in this investigation is used. Throughout the POI, CVRD, in turn, had a 15.48% interest in USIMINAS. Even assuming the highest possible percentages of equity ownership by CSN in Valepar, by Valepar in CVRD, and by CVRD in USIMINAS, CSN would own well under 5% of USIMINAS. Based on this evidence, CSN and USIMINAS/COSIPA are not affiliated within the meaning of section 771(33)(E) of the Act.

With respect to affiliation based on control, petitioners have not clearly identified which entities they believe are in a position to exercise control over CSN and USIMINAS (or USIMINAS/ COSIPA) or on which specific subparagraph (F or G) of section 771(33) they are relying in their analysis. Therefore, we have analyzed petitioners comments under both section 771(33)(F) and (G).

In accordance with section 771(33)(F), we first examined whether the record establishes common control over these entities by Mr. Steinbruch, CVRD, or Previ as separate entities. Assuming arguendo that we were to conclude that Mr. Steinbruch, as chairman of CSN's board of directors, controls CSN, the record contains no evidence that he controls USIMINAS.

CVRD is affiliated with both CSN and USIMINAS under section 771(33)(E). CVRD directly owns more than 5% of USIMINAS (15.48% of the voting shares) and indirectly owns, through its holdings in Docenave, more than 5% of CSN (10.3% of the voting shares). However, CVRD does not control both CSN and USIMINAS. Mr. Gabriel Stoliar, the CEO of CVRD, serves on the eight-to-ten-member boards of both CSN and USIMINAS. In addition, CVRD appoints an additional board member at USIMINAS and through Docenave (in which CVRD is the majority stockholder), appoints one at CSN. However, Brazilian law prohibits board members from representing any other company's interests while serving on the board of a different company. See USIMINAS' Sales Verification Report at 5–6 and COSIPA's Sales Verification Report at 2. In addition, the record indicates that the USIMINAS board of directors (the ''administrative council'') is responsible for macroeconomic issues such as large investment matters and does not control daily operations. See USIMINAS' Sales Verification Report, at 5. Finally, CVRD is not a member of the USIMINAS shareholder's agreement, whose members control 53% of the voting stock of that company. The Department finds that, under the circumstances of this case, CVRD is not in a position to control USIMINAS within the meaning of section 771(33) of the Act. Because CVRD does not control USIMINAS, it cannot exercise common control over both CSN and USIMINAS within the meaning of subsection (F). Therefore, the issue of whether CVRD controls CSN is moot for purposes of this analysis.

Previ, like CVRD, is affiliated with both CSN and USIMINAS through equity ownership. However, subsection (F) requires a finding of common control, not merely of common affiliation. Previ is not a member of the USIMINAS shareholders' agreement, which controls 53% of the voting stock of that company. Nor is there other evidence that Previ is in a position to control USIMINAS. Because the record evidence does not establish that Previ is otherwise in a position to control USIMINAS, we find that CSN and USIMINAS are not affiliated by virtue of common control by Previ.

The SAA recognizes that, even in the absence of an equity relationship, control may be established ''through corporate or family groupings'' (see SAA at 838), i.e., a corporate or family group may constitute a ''person'' within the meaning of section 771(33) of the Act. See *Ferro Union* v. *United States,* Slip Op. 99–27 (Ct. of Int'l Trade, March 23, 1999). In such a case, the control factors of individual members of the group (*e.g.*, stock ownership, management positions, board membership) are considered in the aggregate. Accordingly, the Department considered whether USIMINAS and CSN are affiliated by virtue of common control by a corporate or family group.

Petitioners allege that the Steinbruch family controls the ''CSN/CVRD group.'' However, there is no record evidence that the family controls USIMINAS. Therefore, there is no basis to find CSN and USIMINAS affiliated through common control by the Steinbruch family.

What constitutes a ''corporate group'' for purposes of the affiliation analysis is not defined; the Department must address the issue on a case-by-case basis. The cases in which the Department has recognized that affiliation exists by virtue of participation in the same corporate or family group involved common control of the firms at issue by members of the same family, the same group of investors, or the same group of corporations. In other words, the ''control group'' language in the SAA does not add a new criterion to the statutory definition of ''affiliation.'' It merely acknowledges that the controlling entity of the ''common control'' provision can be something other than a physical or legal person, and can exercise that common control by means other than equity ownership. It does not allow for treating all affiliation relationships as if they created new ''control groups.'' With respect to USIMINAS and CSN, there is no such pattern of common control. Although petitioners reference a variety of connections between various other entities and CSN and USIMINAS, they do not identify, nor do we find, any definable corporate group that controls both CSN and USIMINAS. Thus, we do not have a basis in the record to find affiliation under section 771(33)(F) of the Act.

With respect to section 771(33)(G) of the Act, petitioners have again failed to clearly identify a basis for finding that CSN controls USIMINAS (or USIMINAS/COSIPA), or vice versa. Petitioners appear to argue that CSN and CVRD are a ''corporate group'' for purposes of the affiliation analysis. While we agree that CSN and CVRD are affiliated, that by itself is not sufficient to consider them a ''corporate group'' for purposes of an affiliation analysis. Moreover, even if the Department were to treat CSN and CVRD as a corporate group, there is no evidence that the alleged ''CSN/CVRD group'' controls USIMINAS within the meaning of section 771(33)(G) of the Act. In some instances petitioners appear to suggest that the corporate group includes not only CSN and CVRD, but also Previ. However, we do not find a sufficient basis in the record to treat CSN, CVRD and Previ as a corporate group for purposes of the affiliation analysis.

Because the record evidence does not support a finding that USIMINAS (or USIMINAS/COSIPA) and CSN are affiliated under any provision of section 771(33), there is no basis to apply the collapsing criteria in § 351.401(f). Therefore, the Department has continued to treat CSN and USIMINAS/ COSIPA as separate entities for the purposes of this investigation.

Comment 2: PIS/COFINS Taxes. To avoid duplication, USIMINAS/COSIPA and CSN prepared a joint description of their PIS/COFINS tax argument in CSN's Case Brief of April 16, 1999 (CSN's Case Brief). In their argument, respondents note that section 773(a)(6)(B)(iii) of the Act (''the tax adjustment provision''), as amended, ensures that the Department makes a tax-neutral comparison when comparing normal value to export price. This section of the statute achieves this end by requiring the Department to adjust normal value by the amount of any indirect taxes imposed on home market sales, but not on export sales. Respondents state that, until recently, the Department considered Brazil's Programa de Integracao Social (PIS) and Contribuicao do Fin Social (COFINS) taxes to be indirect taxes that fall within the meaning of the tax adjustment provision. The Department's change in its treatment of these taxes, according to respondents, is based on a factually incorrect assumption that these taxes apply to total gross revenue and on a legally improper understanding of what indirect taxes are.

Respondents point out that the statute and prior case law make clear that three circumstances must exist for the tax adjustment provision to apply to a particular tax. First, the tax must be ''directly'' imposed on the home market product. Second, it must be rebated or not collected on export sales. Third, it must be added to or included in the price of the home market sale. The fact that these taxes are not imposed on exports has never been an issue. Thus, respondents state that the only requirements of significance in this review are the first and third requirements.

In failing to adjust respondents' home market price for Brazil's PIS/COFINS taxes in the Preliminary Determination, respondents argue that the Department incorrectly determined that ''these taxes are levied on total revenues.'' Respondents state that until recently, the Department consistently held that PIS/COFINS fall within the meaning of the tax adjustment provision. Respondents cite numerous antidumping cases from Brazil in support of their position that PIS and COFINS should be deducted from home market price. See CSN's Case Brief, p. 7.

Respondents contend that in the Final Administrative Review of Silicon Metal from Brazil, 62 FR 1970 (January 14, 1997)(Silicon Metal from Brazil, 1997), the Department erroneously determined that PIS/COFINS are analogous to two Argentine taxes previously determined not to be indirect taxes within the meaning of the tax adjustment provision. Respondents state that in the Final Determination of the Less-Than-Fair Value Investigation of Silicon Metal from Argentina, 56 FR 37891 (August 9, 1991) (Silicon Metal from Argentina), the Department refused to make an upward adjustment to U.S. price for two Argentine taxes because these taxes were based on non-sales revenue as well as sales revenue. The Department concluded that these taxes were not ''directly'' imposed on Argentine sales within the meaning of section 773(a)(6)(B)(iii) of the Act.

According to respondents, petitioners in Silicon Metal from Brazil, 1997 glossed over the fact that Brazilian and Argentine taxes are, in fact, vastly different and asserted that PIS/COFINS are ''*almost* identical'' to the two Argentine taxes. Respondents state that PIS/COFINS are imposed only on a company's total domestic sales. Respondents assert that CSN's Sales Verification Report and Exhibit 28 of the Report demonstrate that the basis for both PIS and COFINS is gross sales (Receita Bruta de Vendas), minus credit billing adjustments, canceled sales, and IPI, plus ''other'' sales revenue. Respondents state that the accounting documents in Exhibit 28 further demonstrate that it calculates its PIS and COFINS tax liability on sales revenue alone. Moreover, respondents note that Brazilian law specifies that the COFINS tax ''shall be two percent and charged against monthly billing, that is gross revenues derived from the sale of goods and services of any nature.'' (emphasis added). See CSN's Supplemental Response—Sections B and C at Exhibit 9 (January 25, 1999). Likewise, the PIS tax represents 0.65% of invoicing—''invoicing'' being defined as the ''gross revenue* * *originating from the sale of goods from own account (sic), from the price of the services rendered and from the result obtained from alien's (i.e., consignees) account.'' See Supplementary Law No. 70 of September 7, 1970. Since neither tax is based on non-sales revenue, respondents maintain that PIS/COFINS are not ''gross revenue taxes'' and, therefore, not analogous to the Argentine taxes in Silicon Metal from Argentina.

In addition, respondents claim that the Department's decision not to make an adjustment for PIS and COFINS is unsupported by any accounting or economic analysis. The fact that PIS and COFINS sales taxes are calculated on an aggregate basis as opposed to an invoice-specific basis is irrelevant—the tax liability is the same. In respondents' view, no basis exists to conclude that the manner of calculating a tax disqualifies a tax from an adjustment under section 773(a)(6)(B)(iii) of the Act.

Respondents state that the Department has not, in any of its decisions relating to this issue, identified any support for its classification of a sales tax as a ''gross revenue tax'' simply because it is calculated on an aggregate basis. As a result, respondents reiterate that the taxes are based exclusively on home market sales and for this reason the Department for almost two decades found these taxes to qualify for a COS adjustment.

The third prong, inclusion of the taxes in the home market price, is satisfied in the instant case—the Department has never based its denial of the PIS/COFINS adjustment on a specific or explained finding that the taxes were not included in the price and passed through to the home market customer. Respondents note that in the Final Administrative Review of Color Television Receivers from Korea, 49 FR 50420 (December 28, 1984), the Department made an adjustment for home market taxes based on the conclusion that the taxes were fully passed through to the home market customers. The ensuing court appeals upheld the Department's practice of making an adjustment for home market taxes under section 772(d)(1)(C) of the Act. See *American Alloys, Inc.* v. *United States,* 810 F3d.1469, 1475 (Fed. Circ., 1994). Therefore, respondents urge the Department to determine that PIS and COFINS are included in the home market price, and passed through to home market customers. In addition, respondents assert that in the Preliminary Determination, the Department did not cite to any record evidence that there is no pass-through. Nor did it prepare any questions related to the pass-through aspect of these taxes in its questionnaires or at verification. Since the Department never asked respondents to rebut any newfound presumption that these taxes were not included in the home market price to the customers, respondents believe the Department is not justified in finding no pass-through in this investigation.

If the Department were to argue that PIS and COFINS are not included in the price because they are not itemized on the invoice (like the IPI and ICMS taxes), respondents maintain that it would be wrong for two reasons: (1) PIS and COFINS were not itemized on the Brazilian invoices in all the Department's previous investigations, yet it always found that these taxes were included in the home market price, and qualified for an adjustment. (2) Whether or not the tax is itemized on the invoice is irrelevant to a pass-through finding. If the tax is not itemized, it is included in the gross unit price. Itemization on the invoice only indicates how the tax is calculated in the accounting records of the company.

Respondents conclude that there is no justification for the Department's preliminary decision to ignore the necessary deduction for PIS and COFINS. The PIS/COFINS adjustment is consistent with Department findings (except for recent erroneous decisions), and decisions by the Courts. Moreover, there is no evidence on the record to support a Department presumption that PIS/COFINS are not included in the home market price. The PIS/COFINS adjustment is required to ensure that the Department's LTFV comparisons are tax neutral, as contemplated by the U.S. dumping law and Article 2.4 of the WTO Antidumping Agreement.

Petitioners counter that the statute and the SAA clearly state that downward adjustments to normal value may only be made for tax amounts directly imposed upon sales of the foreign like product. See section 773(a)(6)(B)(iii) of the Act and SAA, pp. 827–828. In this case, neither the PIS nor the COFINS is directly imposed on sales of the foreign like product. To the contrary, petitioners maintain that these taxes are based on income, not sales prices, and are imposed on all of the company's domestic sales revenue, including service revenue, on an aggregate basis. In fact, petitioners contend that neither PIS nor COFINS appears to be a simple aggregation of sales revenue, as suggested by respondents. COFINS tax liability is net of the ''tax on industrialized goods,'' and as to PIS, it is not clear that PIS is levied on sales revenues and exclusive of financial revenue. See Rebuttal Brief of Schagrin Associates, p. 3, April 27, 1999.

According to petitioners, respondents bear the burden of creating a record sufficient to support findings made by the Department. Petitioners claim that the record in the instant case is devoid of evidence that PIS and COFINS are fully passed through to purchasers.

Contrary to respondents' suggestion that the Department lacks an understanding of indirect taxes, petitioners state that the Department is ''intimately familiar with the way the PIS/COFINS taxes are imposed and collected,'' and since mid-1997 has consistently disallowed claimed adjustments to normal value for these taxes. See footnote no. 10, p. 4 of Dewey Ballantine Rebuttal Brief, April 26, 1999. Petitioners urge the Department not to disturb its settled practice on this issue.

Department's Position: Petitioners are correct in stating that since mid-1997 the Department has consistently disallowed claimed adjustments to normal value for these taxes. Pursuant to section 773(a)(6)(B)(iii) of the Act, normal value of the merchandise will be reduced by the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product.

Respondents have not provided any evidence to support their claim that the Department incorrectly concluded that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed specifically on the merchandise or components thereof. Information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. These taxes do not appear to be imposed on the subject merchandise or components thereof, and therefore, we have no statutory basis to deduct them from NV. As in the most recent review of Silicon Metal from Brazil, 64 FR 6318 (February 19, 1999), (Silicon Metal from Brazil, 1999), the Department has determined that a deduction of the PIS and COFINS taxes is not correct in the calculation of NV because these taxes are levied on total revenues (except for export revenues), and thus the taxes are direct, similar to taxes on profit or wages. Therefore, we made no adjustment for PIS/COFINS taxes in the calculation of the dumping margin for this final determination.

Comment 3: Input Tax Credit. While petitioners made this comment with respect to CSN, it also applies to USIMINAS/COSIPA. According to petitioners, the Department inappropriately deducted the gross ICMS and IPI tax amounts shown on CSN's sales invoices from CSN's reported home market gross unit price. Petitioners believe that for the final determination, the Department should deduct only the actual net ICMS and IPI payments made by CSN to the state and federal governments from CSN's reported home market gross unit prices. Petitioners cite the statute, which states that normal value shall be reduced by ''the amount of any taxes imposed directly upon the foreign like product* * *, *but only to the extent that such taxes are added to or included in the price of the foreign like product.''* See section 773(a)(6)(B)(iii) (emphasis added). The SAA reiterates petitioners' position: ''*It would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale.''* See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–516, 103d Cong., 2d Sess. at 827–828. (emphasis added).

Petitioners argue that the actual net ICMS and IPI payments made by CSN to the state and federal governments were significantly less than the amounts reported by CSN in its home market database. First, petitioners aver that CSN clearly stated in its Section B Response that ''the *net liability* is the amount of the IPI and ICMS owing on the sale of the finished product, minus the credit for ICMS and IPI paid on raw materials.'' (CSN Section B Response at B–23) (emphasis added). Second, petitioners point out that both ICMS and IPI are value-added taxes (VAT), meaning that they are intended to tax the value added by each producer, not the full amount of the producer's sales value. Petitioners suggest that CSN does not understand the nature of a VAT. Finally, petitioners state that the Department's Sales Verification Report clearly indicates that the actual ICMS and IPI tax payments made by CSN to the state and federal governments were significantly less than the gross tax amounts reported in the TAX1 and TAX2 fields of CSN's home market database. Petitioners provide specific examples from the Department's CSN Sales Verification Report at 35 to support this conclusion.

CSN counters that petitioners' arguments for reducing the amount of the adjustment to home market prices for ICMS and IPI taxes to account for the credit received by manufacturers for ICMS and IPI paid on inputs, are wrong both as a matter of fact and of law. CSN cites section 773(b)(6)(B)(iii) of the Act and Daewoo Electronics Co. v. United States, 6 F.3d 1511, 1513–14 (Fed. Cir. 1993) (Daewoo Electronics) in support of its position that the statute requires an adjustment ''to the extent to which the company bears the burden of such taxes.'' The Court of Appeals of the Federal Circuit (CAFC) stated:

> *To prevent the creation of dumping margins merely because the country of exportation taxes home market sales but not exports,* the antidumping law provides an offsetting adjustment to the sales price of the goods. . . . (emphasis added).

CSN notes that the court refused to engage in an inquiry into the extent that the tax is ''passed through'' to the customer; if it is imposed on the home market sale but not on the U.S. sale, it is fully deductible.

CSN claims that the petitioners were selective in their reading of the *SAA*. CSN states that according to petitioners, the quoted language seeks only to distinguish between sales which incur a tax liability and those which do not. CSN, however, maintains that the clear language of the statute is to make sure that a fair comparison be made between prices on the same basis. CSN concludes that there is nothing in either the statute or the legislative history which requires any inquiry into the amount of payment actually remitted by the manufacturer.

However, CSN emphasizes that the steel companies, in fact, do incur the full amount of ICMS and IPI imposed on the sale of their products. In order to prevent the ''cascading'' of a tax, each processor is given a credit for the tax it pays on the inputs it uses to produce the product, so the tax that the manufacturer pays is no more than the tax that is incident on the sale of the finished product. Citing the antidumping statute, CSN notes that the tax is limited to ''the extent that such taxes are added to or included in the price of the foreign like product.''

According to CSN, petitioners are wrong in implying that value-added taxes are somehow different from excise taxes when in fact the courts have made clear that value-added taxes are to be treated in the same manner as excise taxes when it comes to granting the adjustment for indirect taxes. See Daewoo Electronics at 1517. In addition, CSN maintains that petitioners' ultimate conclusion is wrong in that value-added taxes do not ensure that a company's liability is less than the amount of the tax on the product; on the contrary, it is only by the credit against taxes paid on the inputs that the value-added tax ensures that the manufacturer's liability is equal to the amount of the tax on the product it manufactures.

Department's Position: We agree with CSN. To prevent the creation of dumping margins merely because the country of exportation taxes home market sales but not exports, the antidumping law provides an offsetting adjustment to the sales price of the goods in the United States. See section 773(a)(6)(B)(iii) of the Act.

The CAFC in Daewoo Electronics concluded that ''[i]f an exporter's records show that a tax was either a separate ''add on'' to the domestic price or, although not separately stated, was, in fact, included in the price and that the taxes were paid to the government, that satisfies the tax inquiry required by the statute for an adjustment of the U.S. price.'' The CAFC further stated that the statute does not speak to tax incidence, shifting burdens, or pass-through, nor does it contain any hint that an econometric analysis must be performed. The statutory language does not mandate that the ITA look at the effect of the tax on consumers rather than on the . . . company. The CAFC reasoned that as an unavoidable incident of any sale by the company, these taxes can only be recouped in their entirety from purchasers. *Id.* at 1517.

Section 773 (a)(6)(B)(iii) of the Act requires the deduction from NV of any taxes imposed directly upon the foreign like product or components thereof which have been rebated or which have not been collected on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product. The SAA (see, Section B.2.c.(2), at 157)) explains that the deduction of indirect taxes from NV constitutes a change from the existing statute, which required the addition of the tax amount to the U.S. price. The requirement that the home-market consumption taxes in question be ''added to or included in the price'' of the foreign-like product is intended to ensure that such taxes actually have been charged and paid on the home market sales used to calculate NV, rather than charged on sales of such merchandise in the home market generally. As the SAA states, ''[it] would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale.'' At verification, we verified the amount of ICMS and IPI taxes CSN reported for home market sales used to calculate NV. Besides tracing CSN's monthly payments to the government for these taxes from CSN's fiscal accounts to the proof of payment form, in the course of our home market sales traces, we verified that the ICMS and IPI taxes were included on each home market sale invoice. See Exhibits 25 and 29 of CSN's Sales Verification Report.

In sum, the Department is treating consumption taxes in a manner consistent with its longstanding policy (*i.e.*, calculating tax-neutral dumping margins), and in conformity with the statute as amended by the URAA. Since the reported home market gross unit price includes ICMS and IPI taxes, as demonstrated at verification, we have continued to deduct the full amount of these taxes from the home market price in order to achieve parity between the reported U.S. price, exclusive of taxes, and the NV of the comparison model.

Comment 4: Quality Designations. Though petitioners commented on CSN's quality designations, USIMINAS/COSIPA also submitted additional quality fields. Therefore, in the Department's Position below, we have addressed both companies' quality designations.

In petitioners' opinion, the Department should not allow CSN to adopt two additional quality designations: American Petroleum Institute (API) quality (code 9) and automotive wheel quality (code 10). According to CSN, code 9 is produced to API standards for oil pipelines, has a high silicon content, and very clean edges to ensure a tight weld. Petitioners note that end use is irrelevant and the limited information on the record indicates that this quality of steel is already identified by the Department's quality designation ''1'' (i.e., ''High Strength Low Alloy''). According to petitioners, the American Society of Testing and Materials (ASTM) specification A 572 is within quality code ''1'' and contains the ''high silicon content'' that CSN claims is limited to its API quality products. Moreover, petitioners state that CSN's claims regarding the ''very clean'' or ''purified'' nature of this quality steel is equally inappropriate for requiring a separate quality designation. They state that CSN's claim that all its products are ''either aluminum killed or a combination of aluminum killed and silicon'' applies equally to the ASTM A 572 family of steels.

With respect to CSN's claims regarding the need for an automotive wheel quality designation (code ''10''), petitioners assert that this separate designation is based on end use and the Department's existing quality designations confirm that application or use is not the determining factor in distinguishing quality designations. Furthermore, petitioners state that steel products with these characteristics are already separately identified in quality code ''6'' (*i.e.*, deep drawing, whether or not fully stabilized (interstitial-free) or special killed; pressure vessel) is comprised almost exclusively of steels with low silicon content, mechanical strength, and formability.

For the foregoing reasons, petitioners recommend that the Department revise CSN's quality designations so that quality designation ''9'' is revised to ''1'' and quality designation ''10'' is revised to ''6''. Furthermore, they state that the cost dataset should be revised to weight-average the cost of CONNUMS that are identical but for quality code ''1'' and ''9'', and ''6'' and ''10,'' respectively. If this approach proves too difficult to program, petitioners recommend that the Department use the higher of the two reported cost amounts.

Respondents did not comment on this issue.

Department's Position: We agree with petitioners. We believe that the quality codes designated by the Department in its initial questionnaire to the respondents adequately cover the different classifications possible for hot-rolled flat-rolled carbon-quality steel products. Therefore, we have designated the quality code ''9'' as quality code ''1'' and quality code ''10'' as quality code

''6'') and adjusted the cost of the CONNUMS accordingly. See Analysis Memo for CSN.

USIMINAS/COSIPA also adopted four additional quality designations which we believe are adequately covered by the codes designated by the Department in its initial questionnaire. We have changed the new codes created by them and matched each one to the correct code among the eight originally designated by the Department. We have, therefore, changed codes ''9'' and ''11'' to code ''3'' and codes ''10'' and ''12'' to code ''4'' and adjusted the cost of the CONNUMS accordingly. See USIMINAS/COSIPA's Analysis Memo.

II. Company Specific Sales Comments

CSN

Comment 5: Date of Sale. Petitioners argue that for sales to the United States, the commercial invoice date is not an appropriate date of sale for CSN in this investigation. Rather, the record in this case overwhelmingly indicates that the date of the order confirmation is the date when the material terms of sale are established and, therefore, should be used as the date of sale.

Although the Department's regulations provide that the date of sale will normally be the invoice date, petitioners state that, as a general rule, the date of sale may not occur after the date of shipment (see Department Questionnaire, B–16, n.7 (''no date occurring after the date of shipment, including invoice may be used as the ''date of sale''')). Moreover, petitioners note that a date other than invoice date may be used where ''a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' See Preliminary Results of Antidumping Duty Administrative Review of Circular Welded Non-alloy Steel Pipe from Korea, 62 FR 64559, 64560 (December 8, 1997).

Petitioners point out that in its Preliminary Determination the Department stated that ''in most cases, the U.S. date of sale reported by respondents is after the date of shipment of the product from the factory. Because it is the Department's practice to use shipment date as the latest date of sale, the Department is using the ex-factory shipment date as the date of sale for U.S. sales in those cases in which the commercial invoice date is later.'' See Preliminary Determination, p. 8304. Petitioners term the Department's practice of not using a date of sale after shipment as ''appropriate,'' because it reflects the common sense notion that a producer does not ship a product, particularly one made to order, without agreement on the material terms of sale.

Petitioners term the selection of the date of the ''nota fiscal'' (*i.e.*, the ex-factory date) as the Department's ''default'' date of sale methodology. However, in petitioners'' view, the ex-factory date evinces no particular establishment of the material terms of sale. According to petitioners, the record in this investigation indicates that the material terms for CSN's U.S. sales were established at the order confirmation date. To support their position, petitioners cite CSN's Section A submission, which states that the order confirmation is computer generated and ''sets forth the general terms of sale, and specifies...the product type, weight, weight tolerance, price, delivery, destination and other terms and conditions for sale.'' See Section A of CSN's Questionnaire Response (November 11, 1998), p. 27. Moreover, petitioners note that a discussion of the sales process with company personnel at verification confirmed that material terms of sale are established by negotiation of price and quantity, the specific terms of which are confirmed by fax to the customer. See CSN's Sales Verification Report, p. 9).

CSN's U.S. shipment data also supports order confirmation as the date of sale, according to petitioners. They point out that for a large majority of CSN's U.S. sales, the quantities shipped met the order confirmation terms, and even where the quantities shipped exceeded contract quantity tolerances, there appeared to be no change in the unit price for the merchandise. Petitioners note that order date is available for most CSN sales and non-adverse facts available can be used for those instances where the date is not available.

Petitioners conclude that invoice date is not an acceptable date of sale and shipment date is simply an arbitrary construction which does not reflect the evidence of record. Therefore, the Department should use order confirmation date as the date of sale for CSN's sales to the United States.

CSN maintains that the Department should continue to use the nota fiscal date as the home market date of sale and use the commercial invoice date as the U.S. date of sale. CSN notes that petitioners seem to acquiesce in the use of nota fiscal date as the date of sale for home market sales. It is CSN's opinion that petitioners are briefing the U.S. date of sale because (a) an earlier U.S. date of sale will move the universe of POI sales to the United States forward so as to capture invoices issued after the POI and (b) CSN's failure to report sales with nota fiscal or commercial invoice dates outside the POI could result in application of facts available.

CSN states that the commercial invoice date is the only appropriate date of sale for U.S. sales because it is the earliest date by which the material terms of sale are finalized. To support its position CSN notes the following: (1) The fact that quantity tolerances are often exceeded is enough to establish a post-order confirmation date of sale (see, e.g., Final Results of Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand, 63 FR 55578, 55588 (October 16, 1998)); (2) use of the order confirmation date is not practicable for CSN because it is not maintained in the computer system for more than a few months, after which point, the numbers are reused; (3) the only purpose of the nota fiscal is to accompany the over-land shipment from the mill to the port, in conformity with Brazilian law; (4) once at the port, a product originally destined for one market can be diverted to another market; and (5) as verified by the Department, ''the commercial invoice is issued after the coils are in the hold of the ship and, therefore, at that time it is definitely an export sale.'' See CSN's Sales Verification Report, p. 9.

CSN, therefore, stands by its position that the only appropriate U.S. date of sale is the date of the commercial invoice. To the extent that the commercial invoice date is after the ex-port shipment date, CSN suggests that the Department use the ex-port shipment date as an alternative date of sale.

In an issue related to the selection of the date of the U.S. sale, petitioners believe that the Department should apply facts available to those sales CSN failed to report based on the date of shipment from the factory. Although CSN claimed that the date of invoice from its affiliate CSN Cayman/Overseas was the most appropriate date for determining date of sale, petitioners note that the Department used the date of shipment from the mill as the date of sale in its Preliminary Determination. Petitioners state that this information was obtained as a result of a request in the Department's supplemental questionnaire.

Petitioners claim that the Department discovered at verification that CSN had failed to report all sales based on date of shipment from the factory, and subsequently requested that CSN provide the additional sales information. Petitioners argue that because this information was provided late and contains fundamental flaws (*i.e.*

lack of CONNUM designation, price adjustment amounts), the Department should reject it and employ the highest calculated margin to these sales. See section 776(a)(1995) of the Act.

Department's Position: We agree with CSN that the order confirmation date is not the appropriate date of sale. We have determined that the nota fiscal date is the home market date of sale. For U.S. sales, we have continued to use the ex-factory shipment date as the date of sale because the commercial invoice date, the date CSN reported as the date of sale, is after shipment from the factory.

The Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties. This normally includes the price, quantity, delivery terms and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than the invoice date. See Preamble to the Department's Final Regulations at 19 CFR part 351 (''Preamble''), 62 FR 27296 (1997); Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996). Further, in submissions throughout this investigation, CSN has reiterated the fact that the date of the order confirmation is not maintained in its computer system, hard copies are not always kept, and the order confirmation numbers are reused after a few months. Department staff verified the accuracy of these statements (see CSN's Sales Verification Report, pp. 9–11).

The Department does *not* consider dates subsequent to the date of shipment from the factory as appropriate for date of sale. We also disagree with CSN's assertion that invoice date or export shipment date most appropriately represent date of sale. Because the commercial invoice date reported by CSN as its U.S. date of sale falls after the date of shipment of the product from the factory, the Department is continuing to use the ex-factory shipment date as the date of sale for its U.S. merchandise. CSN reported the date of the nota fiscal (*i.e.*, the ex-factory shipment date) of its U.S. sales in its supplemental submission. However, although we gave CSN ample opportunity to report the dates of all potential dates of sale, including order confirmations and notas fiscais issued during the POI, CSN elected not to submit the requested data in its entirety.

In our supplemental questionnaire to CSN's Section A Response (December 4, 1998), we requested that CSN report:

> all sales for which ''the order confirmation date (or comparable date if data on order confirmation does not exist) was within the POI. If you believe another date is a more appropriate date of sale, you should provide all sales during the POI based on order confirmation date, using alternative production or accounting records, and the other date (*provided the other date is not after the merchandise is shipped from the plant*). (emphasis added)

In our January 4, 1999 Supplemental Questionnaire to Sections BCD, we repeated this question and added:

> If CSN chooses not to report order confirmation date, and we determine at verification that this information is available and is a more appropriate date of sale than that reported, CSN may be subject to the use of adverse facts available pursuant to section 776 of our statute.

In its response to this submission (January 25, 1999), CSN did provide the dates of the U.S. notas fiscais, but only those dates associated with the commercial invoices issued during the POI. In their pre-verification comments, petitioners requested that at verification the Department examine those sales shipped from the factory, but not invoiced during the POI (see, Dewey Ballantine's Letter to the Secretary, March 8, 1999). Accordingly, the Department specifically requested this information in its verification outline. At verification, CSN prepared a printout of the quantity and value of those U.S. sales which left the mill (*i.e.*, which had a nota fiscal date) during the POI, but were not invoiced until after the POI (see Exhibit 27 of CSN's Sales Verification Report), which represent unreported U.S. sales.

Since CSN failed to follow explicit instructions in the questionnaire, or to contact the Department to determine whether an alternate reporting basis was appropriate, we find that CSN did not cooperate to the best of its ability. Therefore, as adverse facts available, we are applying the highest calculated margin to those U.S. sales. The Department finds that this margin is indicative of CSN's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

Comment 6: Affiliation. Petitioners contend that despite explicit instructions in the Department's questionnaire to report U.S. prices that are ''calculated from the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter,'' CSN inappropriately reported as its ultimate U.S. price the transaction between itself and a trading company to which CSN has numerous connections. Petitioners note that in response to the Department's request for additional information on the relationship between CSN and this customer, CSN stated that its customer is ''simply a trading company that receives a commission from its suppliers.'' See Section A of CSN's Supplemental Response, January 19, 1999, p. 41.

Petitioners claim that CSN failed to inform the Department that the person who manages the trading company's daily operations is also a board member of both CSN and the trading company's controlled subsidiary, Emesa, which, petitioners point out, CSN acknowledges as a ''related party.'' According to petitioners, the fact that the manager of the trading company's operations is ''required by law to act in the best interest of CSN'' further demonstrates an affiliation between the two parties. Petitioners assert that, faced with similar circumstances in the past, the Department not only deemed companies to be affiliated, but also collapsed companies, based on overlapping board involvement by senior managers. In support of their position, petitioners cite the Final Results of New Shippers Antidumping Duty Administrative Review of Certain Welded Carbon Standard Steel Pipes and Tubes From India, 62 FR 47632, 47639 (September 10, 1997) (Steel Pipes and Tubes From India).

In addition, petitioners note that CSN's Sales Verification Report reveals a surprising similarity in terminology between Brazilian GAAP's definition of a related party and the Act's definition of an affiliated entity (see Exhibit 2a, p. 4 and 771(33) (1995) of the Act). As stated under Brazilian GAAP, petitioners claim that CSN's transactions with the trading company should also be described as ''lacking the independence that characterizes the transactions with independent third parties.'' *Ibid*. Petitioners also contend that the language of the Brazilian GAAP suggests other undisclosed links between the two parties. For example, even though CSN has stated that there is no controlling relationship between itself and the trading company's subsidiary, Emesa, CSN's 1998 Financial Statement indicates that Emesa is related to CSN. Moreover, petitioners note that CSN's disclosure of the trading company's subsidiary as a related party is in isolation. The important point, according to petitioners is that the subsidiary is defined as a related party even though CSN did not fully disclose why it was deemed a related party.

Petitioners conclude that the evidence on the record indicates that the Department should not base its final determination on the reported transaction prices between CSN and the trading company. Rather, the Department should resort to adverse facts available and apply the highest transaction margin in the petition or the highest calculated transaction margin to these sales.

CSN rejects petitioners' conclusion that the trading company and CSN are affiliated because a customer of CSN owns a percentage of Emesa, which in turn owns 1.1% of CSN. The fact that one of the officers of the trading company sits on the boards of both Emesa and CSN is equally unconvincing in CSN's view.

CSN contends that petitioners' reasoning cannot possibly lead to a determination that Emesa, with only 1.1% of CSN shares, controls CSN. Moreover, CSN notes that Emesa must vote with the majority of the parties to the shareholders' agreement and consequently has as little power as other shareholders with similar percentage holdings in CSN.

According to CSN, the critical question regarding Mr. Netto's position as an officer of the trading company and a member of CSN's board, is whether Mr. Netto is in a position to control both companies. While Mr. Netto may be able to control the trading company, CSN maintains that he has no ability to control CSN because Emesa, the company he represents, holds only 1.1 % of CSN shares.

Furthermore, CSN argues that evidence on the record shows that CSN board members play no role in setting prices (see CSN's Sales Verification Report, pp. 4–5). To confirm this statement, CSN ran the traditional arm's length test used by the Department and found that sales to this customer passed the test, *i.e.*, the prices charged to this company were not lower than the prices charged to its other U.S. customers.

For all the above reasons, CSN urges the Department to use the U.S. sales data as reported by CSN (*i.e.*, CSN's sales to the trading company) and not require CSN to report the resales of the trading company.

Department's Position: We agree with CSN. Section 771(33) of the Act provides that the following persons are affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer or employee (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons, directly or indirectly controlling, controlled by, or under common control with, any person; (G) any person who controls any other person and such other person.

An examination of each of these criteria results in the conclusion that the trading company and CSN are not affiliated pursuant to section 771(33) of the Act. The relationships among the trading company, Emesa, and CSN, and the connection that Mr. Netto has to each as a board member of CSN and a corporate officer of the trading company and of Emesa provide, the basis for petitioners' conclusion that CSN and the trading company are affiliated. First, section 771(33)(A) of the Act is inapplicable because evidence on the record does not reveal any familial ties among the three entities and Mr. Netto. Nor is the relationship between CSN and its customer, the trading company, one of a partnership or employer or employee within the meaning of sections 771(33)(C) and (D) of the Act.

As a corporate officer of the trading company and a member of CSN's board, the Department considers Mr. Netto affiliated to the trading company and CSN pursuant to section 771(33)(B) of the Act. As a corporate officer of the trading company, Mr. Netto may be able to control that entity within the meaning of section 771(33), but he is in no position to control CSN because Emesa, the company he represents on CSN's board, holds only 1.1% of CSN's shares. We find this percentage ownership, even with Emesa's participation in CSN's shareholders agreement, insufficient to establish that Emesa is in a position to control CSN, as required under section 771(33)(F) or (G) of the Act. Moreover, Mr. Netto is obligated to vote with the majority of the parties to the shareholders' agreement and has little say in the operations of CSN. Mr. Netto's affiliation with the trading company and CSN does not put him in a position to control CSN or Emesa, even though he is on the board of each of these companies.

Finally, section 771(33)(E) of the Act, which considers any persons or parties affiliated if they directly or indirectly own, control, or hold with power to vote 5% or more of the outstanding votes in a company, does not apply. Although Emesa is considered a subsidiary of the trading company, its 1.1% voting share in CSN's stock does not meet the statutory criteria.

In conclusion, we find no basis for affiliation between CSN and its customer, the trading company. Petitioners' reliance on the similarity between the Brazilian GAAP's definition of a ''related party'' and the Act's definition of an ''affiliated party'' is irrelevant. A similarity in the definition of two words does not necessarily give them the same meaning, especially when applied in different circumstances. Petitioners provide no support for their conclusion that CSN's dealings with the trading company ''lack independence.'' Finally, the fact that CSN's 1998 financial statement indicates that Emesa is related to CSN does not establish that CSN is affiliated with the trading company within the meaning of section 771(33) of the Act.

Therefore, for this final determination, we are using the U.S. sales between CSN and the trading company as reported by CSN.

Comment 7: Commissions. Petitioners object to CSN's characterization of a certain payment directly to CSN's customer as a ''commission,'' when, in fact, it is a rebate or discount. According to petitioners, when customers receive payments from suppliers, those payments cannot be classified as commissions unless the party that receives the payment is functioning solely as a commissionaire and not as a purchaser—which is not the case in this instance. Petitioners state that there is no dispute in this investigation that the so-called ''commission agent'' is affiliated with the U.S. customer. Therefore, petitioners contend that the Department should follow its practice of treating payments made directly to the U.S. customer or to a customer's affiliate as a rebate or discount, not a commission. Petitioners cite the Preliminary Determination of Sales at Less-than-Fair-Value; Open-End Spun Rayon Singles Yarn from Austria, 62 FR 14399, 14401 (March 26, 1997), (Preliminary Determination of Spun Rayon Singles Yarn) in support of their position.

CSN claims that petitioners' reading of this case improperly suggests that the Department's analysis focuses entirely on whether an unaffiliated purchaser resells subject merchandise to a party with whom that purchaser is affiliated. CSN notes that petitioners conceded that the Department reversed its preliminary determination to treat the commission as rebates in the Final Determination of Sales at Less Than Fair Value of Open-End Spun Rayon Singles

Yarn From Austria, 62 FR 43708–09 (August 15, 1997) (Final Determination of Spun Rayon Singles Yarn) after it learned that the unaffiliated purchaser indeed acted as a commissionaire. CSN claims that contrary to what petitioners suggest, the Department did *not* reverse its treatment of the commission from the Preliminary Determination to the Final Determination of Spun Rayon Singles Yarn *solely* because the selling agent and the selling agent's customer were unaffiliated, but because the unaffiliated selling agent ''performed the functions of a commission agent'' and because the respondent made ''payments directly to the selling agent for services rendered in the sales transaction'' See *Id.*

CSN states that it pays a commission directly to the affiliate of its ultimate customer, not to these companies' customers, for the selling services these companies perform for CSN (*e.g.*, handling the paperwork involved in a sale). Moreover, CSN directly invoices the ultimate customers and consistently refers to the payments it makes to these two parties as commissions in its accounting records.

CSN also rejects petitioners' claim that its payments to another customer for sales services are rebates because the party is a customer, not a commissionaire. According to CSN, this party earns the commission by establishing a portion of CSN's export business in the United States and handling sales paperwork and claims that arise from that portion of CSN's export business. For these reasons, and the fact that CSN refers to these payments as commissions in its questionnaire responses and its accounting records, CSN maintains that the Department was correct in treating these payments as commissions.

Department's Position: We agree with CSN. Generally speaking, a commission is a payment to a sales representative for engaging in sales activity. See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, and Revocation in Part of the Antidumping Duty Orders, 60 FR 10900, 10914 (February 28, 1995). A discount is a reduction in price to a customer, while a commission is a form of payment for services. Therefore, the issue is not whether or not the trading company is affiliated with the customer but whether there was one transaction between CSN and the ultimate customer in which the trading company acted as sales agents for a commission; or whether there were two transactions, one in which the trading company bought from CSN and received a discount on the price for that initial sale and subsequently resold the merchandise to the ultimate purchaser. See Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Review 60 FR 65264, 65277–8 (December 19, 1995); Certain Carbon Steel Products from Austria; Final Determination of Sales at LTFV, 50 FR 33365 (August 19, 1985).

The general purpose and administration of the payments at issue is, in most instances, consistent with the characteristics of commissions to trading companies outlined in the Final Determination of Sales at Less-Than-Fair Value: Stainless Steel Angle from Japan, 60 FR 16608, 16611 (March 31, 1995): The Department has recognized that commissions paid to trading companies have certain characteristics: (1) They are agreed upon in writing, (2) they are earned directly on sales made, based on flat rates or percentage rates applied to the value of individual orders, (3) they take into consideration the expenses which a trading company incurs, and (4) they take into consideration the sales and marketing services performed by a trading company in lieu of an exporter/manufacturer establishing its own larger sales force. See Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 61 FR 67308–67318 (December 20, 1996) and Oil Country Tubular Goods from Austria, 60 FR 33551 (June 28, 1995) (OCTG from Austria).

Although CSN does not maintain general commission agreements with either the agents or with the trading companies it uses, the commission rate is negotiated on a sale-by-sale basis and is referenced on the ''production order'' that CSN issues upon receiving an order from a client. See Document B in Exhibit 5 of CSN's Section A Response.

Commissions are normally set at given rates prior to sale. During the POI, CSN's commission rate remained constant, regardless of the price of the individual sale or the trading company involved. The trading companies used for sales of the subject merchandise performed the functions of a commission agent. CSN characterizes its payments to these trading companies as recognition for services performed in the sales process. As such, they are by nature sales commissions (see OCTG From Austria).

Each U.S. sale involved one transaction between CSN and its U.S. customer. CSN, through CSN Overseas or CSN Cayman, invoiced the U.S. customer directly. The U.S. customer, not the selling agent, paid for the merchandise. If CSN had paid the ''commission'' to the ultimate unaffiliated U.S. customer the expense would be considered a discount on the price between the U.S. customer and CSN. CSN paid the trading companies a commission in a separate transaction for services rendered. Moreover, at verification we established that the payments CSN made to the trading companies during the POI were administered and documented as commissions in CSN's accounting records. See CSN's Section A Response to the Department's Questionnaire, Exhibit 5.

Comment 8: Overruns. Petitioners maintain that, consistent with its prior practice, the Department should not include overrun sales in its calculation of normal value because these sales are not in the ordinary course of trade.

In CSN's opinion, the fact that these products are sold out of inventory does not make them a different product from that which is produced to order. CSN concedes that if the product were non-prime quality, petitioners would have a good argument. However, CSN states that these products are mostly prime-quality merchandise. CSN maintains that the fact that these products are sometimes sold at a discount is no reason to exclude them.

Department's Position: We agree with respondent. To determine if sales or transactions are outside the ordinary course of trade, the Department evaluates all of the circumstances particular to the sales in question. Examples of sales that we might consider outside the ordinary course of trade are sales involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. See 19 CFR 351.102.

In its questionnaire response, CSN stated that it generally produces to order. Sometimes, however, the company runs coil that weighs more than the customer will accept or is of a quality that meets the necessary specifications but does not meet the customer's particular quality expectations. The product is set aside to be sold out of inventory to other customers that will accept it. CSN then assigns an order confirmation number identifying the sale as an overrun. At verification we learned that overruns, like any of the merchandise produced by CSN can occasionally be judged as off-quality by a committee of production engineers, be placed in inventory, and subsequently sold as non-prime product. However, the merchandise can just as readily involve the wrong dimensions for a specific customer's order and continue to be sold as prime merchandise.

Moreover, CSN did not produce any of the subject merchandise according to unusual specifications. Nor were any of CSN's products sold at aberrational prices, with abnormally high profits, or sold pursuant to unusual terms of sale.

Finally, at verification we determined that those sales classified as overruns by CSN were only sold in the home market and represent such an insignificant portion of total home market sales during the POI that their effect on the margin, if any, would be negligible (see Exhibit 9 (c) of CSN's Sales Verification Report). Since the factors that the Department considers in determining if merchandise is outside the ordinary course of trade are not germane to the sales CSN classifies as overruns, we do not think they warrant exclusion from the home market database.

Comment 9: Duty Drawback. Since CSN failed to present the requested information on duty drawback at verification, petitioners state that consistent with the Act and Department practice regarding information that is unverified, the Department should disallow any duty drawback adjustment for purposes of this final determination.

CSN counters that it is not uncommon for the Department to decline to verify several items during the course of a verification. In fact, CSN notes that this practice is specifically endorsed in the Department's Antidumping Manual (see Chapter 13, pp. 5–6, January 22, 1998). CSN states that since this item has a relatively small impact on the antidumping margin and verification of duty drawback adjustments can take an inordinate amount of time, the Department elected not to verify CSN's duty drawback adjustment. CSN concludes that denial of this adjustment would be inconsistent with Department policy and would set a bad precedent for future cases.

Department's Position: We disagree with petitioners. The petitioners are incorrect in stating that it is consistent with the Act and Department practice to disallow any unverified adjustment. In Monsanto v. United States, 698 F. Supp 275, 281 (CIT 1988) the Court upheld the Department's discretion to pick and choose which items it wants to examine in detail. The Court stated that ''verification is a spot check and is not intended to be an exhaustive examination of the respondent's business.'' *Id.* In addition, in the Department's Antidumping Duty Manual we state the following:

> Usually, it is not necessary, nor is there time to verify every bit of data in the questionnaire response. Therefore, it is critical to rank your verification topics in priority . . . . The fact that an item was not actually verified will not mean that the item is unverified. Verifications involve a great deal of sampling. Consequently, assumptions about items not selected for verification will depend on how the verification went for the selected items . . . .

Due to time constraints and the relatively small impact of the duty drawback adjustment on the dumping margin, it was mutually agreed that other adjustments (*e.g.*, interest rate for imputed credit) were of greater significance. Therefore, we did not examine the documentation relating to CSN's duty drawback adjustment. We have continued to adjust U.S. price for duty drawback in this final determination.

Comment 10: Inland Freight Costs. Petitioners cite a number of instances in the Department's Verification Report where it was unable to verify CSN's reported home market and U.S. inland freight costs. Moreover, petitioners note that the Department was unable to verify the arm's length nature of CSN's freight expenses with MRS and FCA, both rail companies in which CSN owns shares.

Accordingly, petitioners maintain that the Department should not rely on CSN's reported amounts, but rather should resort to (adverse) facts available, using either zero or the lowest amount reported for home market sales and the highest amount reported for all U.S. sales.

CSN strongly objects to petitioners' recommendation that the Department use adverse facts available for its home market and U.S. inland freight expenses. CSN points out that for each of the many shipments which leave its mill every day, it receives an invoice from the transportation company, the amounts of which are input manually into CSN's nota fiscal database. According to CSN, since verification of these amounts involved searching manually for the transportation invoice(s) associated with each selected sale, time did not permit finding all of the documentation for the pre-selected and surprise sales chosen by the Department.

In response to petitioners' claim that CSN could not establish the arm's length nature of its rail expenses, CSN states that MRS's financial statements during the POI demonstrate its profitability. CSN also showed the arm's length nature of its purchase of transportation services from FCA by comparing the rates charged to CSN with the rates charged to unaffiliated customers for similar distances and similar products.

CSN points out that it did not provide documents showing that the reported inland freight amounts were wrong. It simply did not have enough time. CSN concludes that since the integrity of the reported amounts was never questioned, the Department should find CSN's methodology for reporting inland freight to be reasonable and accurate. If the Department determines otherwise, CSN suggests the following: an alternative combined port expense/inland freight adjustment (see CSN's Sales Verification Report, p. 29 and Exhibit 23) for U.S. sales; use the amount in CSN's income statement for the POI for freight and divide by the POI sales value for a factor to be applied to the gross unit price).

Department's Position: We agree with CSN. At verification we determined that CSN used the actual freight expenses incurred for its home market inland freight expenses. We were able to trace these amounts to CSN's nota fiscal database. For U.S. inland freight expenses, the only error as noted by CSN during verification was the incorrect coding of a U.S. shipment by truck when, in fact, the merchandise was shipped by rail. Since trucking is more expensive than rail, this error was not to CSN's advantage.

In addition, we cannot accept petitioners' claim that CSN's freight expenses were not made at arm's length. MRS' financial statements during the POI indicate that the rail company sold above its cost of production and the Department's cost verifiers noted its net profitability in its financial statements covering the POI (see Exhibit 14 of CSN's Section A Response, November 16, 1998 and CSN's Cost Verification Report, April 8, 1999, p. 14). In addition, in its Supplemental Section BCD Response, CSN demonstrated the arm's length nature of its purchase of FCA transportation services, showing CSN's expenses as greater than the average rate charged to other FCA customers.

We are satisfied that CSN demonstrated the integrity of its home market and U.S. inland freight expenses. Moreover, CSN showed that its transactions with the affiliated rail companies were arm's length in nature. Therefore, we have accepted CSN's freight expenses as reported for the final determination.

Comment 11: Imputed Credit. According to CSN, the Department erred in its calculation of both U.S. and home market imputed credit in the

Preliminary Determination. CSN objects to the Department's use of the period between the ex-factory date and date of payment by the customer in calculating U.S. credit. In its calculation of home market credit, CSN contends that the Department should use the gross unit price, inclusive of ICMS and IPI, and not the net unit price.

U.S.

CSN argues that the ex-port shipment date more accurately reflects the theory behind the U.S. imputed credit adjustment. According to CSN, under the time value of money theory, a seller begins losing money the day the product is released from its possession for *delivery* to a customer until the day the seller receives payment from the customer. To support its opinion, CSN cites the CAFC in LMI-LaMetalli Industriale v. United States, 912 F.2d 455, 460–61 (Fed. Cir. 1990)(LMI-LaMetalli), which stated that the imputation of credit costs ''must correspond to a . . . figure reasonably calculated to account for such value during the gap between delivery and payment.''

CSN asserts that the Department determined during verification that shipment of the product to the port simply represents the day the product leaves the mill for the port, where it may or may not be placed on a ship for export. CSN notes that the nota fiscal, not the commercial invoice, accompanies the merchandise to the port, where it can then be diverted to other markets, including the home market. CSN states that since ''delivery'' can only be deemed to begin when the product leaves the port, the Department should use ex-port date to calculate U.S. imputed credit expenses.

Petitioners point out that CSN recognizes that the appropriate calculation of U.S. credit is inextricably linked to the issue of the appropriate U.S. date of sale. Since the Department correctly used the date of the nota fiscal as the date of sale in the Preliminary Determination, petitioners believe the U.S. imputed credit should be calculated from this date to the date of payment by the customer.

Petitioners note that CSN has reported that the vast majority of its U.S. sales are produced to order. Therefore, they conclude that CSN knows that the product is destined for the United States in most instances. As support for their argument, petitioners point out that the Department verified that the only merchandise diverted to the home market is damaged merchandise. See CSN's Sales Verification Report, p. 9. In petitioners' opinion, CSN is asking the Department to determine the date of sale, and thereby, the appropriate date for calculating imputed credit costs, on exceptional cases rather than on the vast majority of sales.

Moreover, regardless of its destination, petitioners contend that the product, once it leaves the factory, incurs an imputed credit cost. This, according to petitioners, is the ''commercial reality'' which must be reflected in the Department's calculations. See, LMI–LaMetalli v. United States, 912 F.2d 455 (Federal Circuit 1990); cf CSN's Case Brief, p. 5.

Alternatively, petitioners state that if no credit cost is incurred until shipment from the port, then CSN must incur an inventory carrying cost for the time between shipment from the factory and shipment from the port.

Home Market

CSN views the Department's calculation of the home market imputed credit adjustment net of ICMS and IPI taxes as inappropriate because the money lost as a result of the passage of time between shipment to the customer and the receipt of payment from the customer is the entire amount of the payment due on the invoice (*i.e.*, inclusive of on-invoice taxes).

CSN states that it is required to pay the government each month for the amount of the invoiced ICMS and IPI it collects (net of credit for taxes paid on inputs). CSN emphasizes that it alone is responsible for any time value of money losses it incurs as a result of extending its customers' credit terms. Therefore, CSN asserts that the basis for the calculation of home market credit should be the gross unit price, inclusive of taxes.

To support its position, CSN cites the final LTFV determination in Silicon Metal from Brazil, 56 FR 26982 (June 12, 1991) as precedent for this approach: ''The ICMS incident to a home market sale is outstanding until the time that the customer pays for its merchandise. Until the customer pays . . . the (producer) cannot use the ICMS collected on the sale to offset the ICMS it has paid on purchases of materials used in the production of the subject merchandise * * * . Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses.'' The respondent also cites the CAFC, in LMI-LaMetalli v. United States, which stated that the imputation of credit cost, as ''a reflection of the time value of money, * * * must correspond to a * * * figure reasonably calculated to account for such value during the gap between delivery and payment,'' and that it should conform with ''commercial reality.'' 912 F.2d at 460–61.

CSN concludes that the VAT taxes in Brazil, which are included on each invoice, are a part of the time value losses incurred by Brazilian companies when extending credit terms to their customers. Therefore, it reflects commercial reality to include these taxes in the home market imputed credit adjustment.

Petitioners argue that the Department correctly calculated home market credit expenses using a price net of ICMS and IPI taxes. (Petitioners noted that although the Department intended to calculate home market credit expenses net of taxes, it inadvertently failed to do so in the computer programming.) They maintain that there are no credit costs associated with the ICMS and IPI payments to the government because CSN admits that it does not pay these taxes until it collects from its customers. Petitioners state that even if CSN pays the government on an invoice-specific basis, these taxes are only paid once a month. Moreover, the record contains no data which correlates shipments, customer payments to CSN, and CSN's payment of VAT taxes to the government, which would permit the accurate calculation of the claimed imputed credit cost adjustment.

Regarding CSN's contention that an imputed credit cost inclusive of ICMS and IPI taxes is warranted because the producer cannot use the ICMS collected on the sale to offset the tax paid on raw materials used in the production of the merchandise, petitioners argue that the imputed credit costs would be incurred only on the amount of the VAT on the raw material costs and not on the finished product. Furthermore, petitioners maintain that this imputed credit cost would have to reflect the CSN payment period on raw material purchases for both home market and exported merchandise. Petitioners add that even if CSN did pay the VAT on the final product prior to payment from CSN's customer, the period for home market imputed credit costs would be the date of payment to the government, not the date of shipment.

Petitioners note in the Final Results of the Antidumping Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18486, 18488 (April 15, 1997), the Department stated that there is no statutory or regulatory requirement for making this adjustment. According to petitioners, to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in respondents' home market and U.S. databases.

Therefore, petitioners conclude that the Department should continue to use its well-supported and consistent practice of calculating imputed home market credit expenses net of ICMS and IPI taxes.

Department's Position: Both petitioners and the respondent are incorrect in their contention that the credit period is inextricably linked to the date of sale. As cited by petitioners, the seller begins losing money the day the product is released from its possession for *delivery* to a customer until the day the seller receives payment from the customer. This period comprises the imputed credit period. It is the Department's longstanding policy when calculating imputed credit to use the period between the date of shipment from the factory and the date of payment by the customer. See Notice of Final Results of Antidumping Duty Administrative Review; Ferrosilicon From Brazil, 62 FR 43508 (August 14, 1997).

CSN's characterization of the ex-factory date as ''simply the day the product leaves the mill for the port, where it may or may not be placed on a ship for export'' is misleading. The ex-factory date is the date marking the commencement of delivery of an order to a specific customer. The imputation of credit costs ''must correspond to a * * * figure reasonably calculated to account for such value during the gap between delivery and payment.'' See LMI–LaMetalli, 912 F.2d at 460–61.

Since the vast majority of CSN's sales are produced to order, CSN knows which products are destined for the United States when the product leaves the factory. Diverting an order of merchandise destined for export to a home market customer because of damage or some other reason is certainly the exception, not the rule, as CSN seems to characterize it.

CSN itself characterized the calculation of the imputed credit adjustment as ''the difference between ex-factory shipment date and payment date divided by 365 multiplied by the interest rate multiplied by the gross unit price. See CSN's Section C Response to the Department's Questionnaire, p. C–34.

Therefore, we have continued to use the day the product leaves the factory for *delivery* to a customer until the day the seller receives payment from the customer as the period for the calculation of both home market and U.S. imputed credit.

With regard to CSN's contention that home market imputed credit should be calculated using a gross price, the Department agrees with petitioners that home market imputed credit expense should be calculated using the price net of taxes, rather than the gross unit price. It is the Department's practice not to impute credit expenses related to VAT payments. Nor is there any statutory or regulatory requirement for making the adjustment proposed by the respondent.

While there may be an opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. Virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Consequently, there is potentially an opportunity cost or gain associated with each expense. To allow the type of credit adjustment suggested by CSN would imply that the Department would have the impossible task of trying to determine the opportunity cost or gain of every charge and expense reported in the respondent's U.S. and home market databases. Therefore, we have changed the computer program for this final determination to reflect our intention in the Preliminary Determination of calculating home market imputed credit expenses using the price net of VAT taxes. See Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18488, (April 15, 1997); Notice of Final Determination of Sales at LTFV: ESBR from Korea, 64 FR 14865, 14868–69 (March 29, 1999).

Comment 12: Late Payment Fee. CSN objects to the Department imputing a late payment fee on CSN's home market sales when payment had not been received by the date of CSN's January 25, 1999 submission. CSN notes that imputing such late payment fees for these sales is inappropriate because the Department discovered at verification that CSN does not always charge its customers with these late payment fees. The Department, therefore, should not add the imputed fees to CSN's home market price.

Petitioners, however, maintain that in the Preliminary Determination the Department correctly imputed late payment fees for home market sales with missing payment dates because this reflects commercial reality, and CSN's stated policy. Since the Department found at verification that it was CSN's practice to charge late payment fees, petitioners state that it is only logical to impute late payment fees for sales that have missing payment dates. The burden was on CSN to provide specific information on those sales exempt from a late payment fee. In fact, petitioners note that it is the Department's practice to supply facts available data where the information on the record is missing or inadequate. See Final Determination of Sales at Less Than Fair Value; Certain Preserved Mushrooms from Chile, 63 FR 56613, 56622 (October 22, 1998). Given that it is CSN's practice to charge late payment fees and CSN failed to report payment dates on a number of sales, petitioners believe the Department's decision to impute late payment fees was reasonable and in accordance with commercial reality. Moreover, the burden was on CSN to provide specific information on those sales exempt from late payments.

Department's Position: We agree with petitioners. Although CSN's statement that late payment fees on home market sales were not always assessed was borne out at verification, it is CSN's general policy to require a late payment fee. In fact, in the course of the sales verification, we noted that specific rates for late payments appeared on the invoices of some of the customers. Absent any specific information which would indicate which sales were exempt from payment of a late fee, for this final determination, the Department has assumed that CSN assesses a late payment fee on home market sales under the contractual sales terms.

USIMINAS/COSIPA

Comment 13: What Constitutes Verification. In several comments, respondents disagree with the Department's assessment in USIMINAS'' and COSIPA's Sales Verification Reports of what constitutes a verified item. Specifically they dispute the use of terms such as ''spot-checking,'' ''unable to fully review,'' and ''unverified.'' They particularly disagree with the Department's assessment in the USIMINAS and COSIPA verification reports that several items were deemed unverified ''because the Department has not reviewed that item, or not reviewed all accounting records related to that document or transaction.'' They find the Department's practices in several instances to not be in keeping with Chapter 13 of the Department's Antidumping Manual. Furthermore, respondents argue that the vast majority of their fundamental sales and cost data verified.

In referring specifically to certain home market sales trace packets, respondents disagree with the term ''spot checking,'' since they believe that the documents reviewed in fully verified traces were similar to those reviewed in spot checks. Respondents believe that both types of checks included the documents of internal order allocation screen, nota fiscal, order confirmation sheet, mill certificate, and the bill of lading. USIMINAS states that the only additional documents found in a fully verified trace were bank documents, accounting ledgers, and payment advices. Additionally, respondents argue that checking every document for every field in order to consider them fully verified contradicts Department practice as noted in the Antidumping Manual, Chapter 13, 47–50. They note that this section of the manual says the goal of this phase of verification is to verify the details of each sale, such as date of sale, product description, customer, destination, date of invoice, date of shipment, quantity, price, credit terms, and date of payment.

USIMINAS also disagrees with the Department's use of the expression ''unable to fully review'' in referring to a sales trace and dispute the accuracy of this phrase. Respondents also do not believe that they suggested that the Department ''spot check'' sales traces but rather insisted that the Department ''move on and verify the items that are most important to the verification'' so as not to spend an ''inordinate amount of time verifying such insignificant expenses'' as had been verified in previous sales traces. USIMINAS cited the length of the COSIPA inland insurance and the USIMINAS indirect selling expense exhibits, noting the insignificance of these adjustments.

Petitioners argue that the Department should stand by its verified sales findings in the final determination. They believe that respondents were ''woefully unprepared'' for verification and little of the submitted information could be verified. In citing Chapter 13 of the Antidumping Manual, petitioners note that the Department's verifiers correctly followed Departmental practice by examining source documents ''rather than simply accepting 'explanations' '' offered by respondents. Petitioners note that in respondents' first example of a spot-checked sales trace, they mistakenly appear to be comparing a home market with a U.S. sales trace. Petitioners also argue that absent proof of payment and proof of receipt of payment, a sales trace is incomplete and cannot be considered ''verified.'' They subsequently quote eleven statements in the verification reports that they believe demonstrate USIMINAS and COSIPA's general lack of preparation in providing fundamental verification documentation. In petitioners' view, this lack of preparation and uncooperative behavior call for the application of total adverse facts available in the final determination.

Department's Position: As indicated by the USIMINAS and COSIPA verification reports, respondents either said they were unprepared or preferred to cover other topics at each point when items requested by the Department were left unaddressed. In the Department's March 8, 1999 verification outline sent to USIMINAS and the March 11, 1999 outline sent to COSIPA, we stated, ''If your clients are not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified. Furthermore, if information requested for verification is not supplied, or is unverified, pursuant to section 776(a) of the Act, we may use facts available for our final determinations, which may include information supplied by the petitioners.'' Respondents were fully aware that failure to cover items requested by the Department could result in these items being considered unverified. The Department sought to verify each of the items at issue, but these items were not addressed by the company at the time of the request. Further, the verification procedures and verification reports were in compliance with Departmental procedures laid out in Chapter 13 of the Antidumping Manual.

At the same time, most of the items that Commerce was unable to verify are relatively minor and the most essential components of verification were successfully completed. The Department, therefore, does not agree with petitioners that the use of total adverse facts available is warranted. The Department is, instead, applying partial facts available where necessary and using an adverse inference where appropriate under section 776(b) of the Act. See the Facts Available section of this notice and the treatment of specific issues in the comments.

Comment 14: Prioritization and Volume of Material Covered. USIMINAS/COSIPA generally argue that the large volume of material the Department attempted to review in one week and the time the Department spent reviewing ''many items in detail'' did not permit certain items to be verified. They disagree with the manner in which the Department conducted verification and do not believe the Department followed proper time management and prioritization procedures as outlined in Chapter 13 of the Antidumping Manual. Respondents had four specific comments related to prioritization and time management.

USIMINAS believes that the Department's attempt to review USIMINAS and its downstream affiliates, Rio Negro and Fasal, within one week was misguided. It argues that the Department sought to review in detail each company's accounting practices, corporate structure, sales process, quantity and value, and sales trace documents. The respondent believes that this was too difficult and time consuming a task and notes that the review of Fasal as discussed in the USIMINAS Verification Report took nearly a full day of the USIMINAS verification.

Respondents claim that the Department sought to verify ''numerous time consuming and contentious issues'' such as date of sale, order confirmation, CONNUM methodologies, and production and cost information. Respondents argue that the Department should have allotted extra time for the verification, given the level of complexity and detail with which the Department reviewed these items.

Respondents state that the Department requested twenty preselected sales traces, fourteen partial sales traces for specific issues in the verification report, ten surprise sales traces on the first day of verification, and twenty more surprise ''date of sale'' sales traces. They argue that retrieving and compiling all the source documents for these sales was unduly burdensome for USIMINAS staff to prepare, review for accuracy, and present to the Department.

Lastly, respondents argue that the Department sought to verify each item of a sales trace in detail regardless of its importance to the Department's calculations. For instance, they believe that the Department spent ''hours verifying USIMINAS' inland insurance'' and that the length of COSIPA's exhibit on inland insurance demonstrates the Department's overemphasis on the issue. Respondents quote sections of Chapter 13 of the Department's Antidumping Manual to demonstrate that the Department should not ''spend one day verifying inland insurance'' and that verifiers should not treat all information with the same importance.

Petitioners argue that the Department did prioritize issues but USIMINAS and COSIPA prevented the verifiers from verifying those issues. As noted in Chapter 13 of the Antidumping Manual, petitioners state that setting priorities is the responsibility of the verifiers, not the respondents. They argue that the verifiers' efforts to keep the verification moving and to set priorities were constantly challenged by respondents. They cite thirteen quotations from the verification report which they believe support this claim. An example of such a quote is, ''Although we asked for documentation regarding Dufer's sales process, COSIPA requested that we move on to verify other verification subjects, and return to Dufer. We never returned to this issue.'' Petitioners argue that if USIMINAS and COSIPA could dictate which issues could be verified and how deeply, they would be able to ''manipulate the outcome of the verification.''

Petitioners state that ''the verification agenda is not to blame for the fact that USIMINAS and COSIPA were unprepared for verification.'' They disagree that the ''large volume of material the Department attempted to verify'' or the ''considerable time'' the Department spent reviewing items were responsible for USIMINAS and COSIPA's performance at verification. Petitioners note that the Department issues a similarly detailed verification agenda in virtually every proceeding and that respondents never complained to the Department prior to verification. Petitioners contradict respondents' assumption that more time would have allowed verifiers to consider each issue by stating that ''virtually no issue could be verified, regardless of the amount of time devoted to it.'' For example, petitioners note that the Department was unable to verify Fasal's quantity and value despite the amount of time spent reviewing Fasal. Instead, petitioners argue that respondents were unprepared and uncooperative and the Department should apply total adverse facts available in the Final Determination.

Department's Position: In the Department's verification agendas, we informed respondents to contact the Department ''[I]f you have any questions regarding this verification or if you believe any of the verification procedures cannot be performed.'' The Department did not receive any submissions from respondents regarding the length or breadth of the outline prior to verification. The outlines given to the companies were based on Departmental standards with the exception of downstream data, a topic only covered when merited by the facts of a case. The Department disagrees with respondents' description of the amount of time it took to review certain topics such as USIMINAS' corporate structure and inland insurance, and notes that the length of time it took to cover other topics such as quantity and value was left unaddressed by respondents. The verification exhibits themselves demonstrate one factor that contributed to the slow pace of verification—the number of untranslated pages.

The Department recognizes that, like many verifications, there was a significant amount of material to cover. However, it is the Department's responsibility to set priorities and to determine the amount of time spent on topics to ensure that the verification moves forward. As noted in the Department's verification outline, it is the responsibility of the respondents to be prepared for verification to allow this information to be covered expeditiously. The Department believes that it met its responsibilities and that the time spent reviewing certain fundamental issues, such as downstream affiliates, date of sale, order confirmation, and CONNUM methodologies was appropriate for information essential to this investigation.

Comment 15: Use of Total Facts Available. Petitioners state that, based on multiple problems with USIMINAS' sales verification, the Department should apply total adverse facts available. Petitioners specifically reference the Department's inability to complete all of the pre-selected and surprise sales trace examinations in the home market and the U.S. market during its verification of USIMINAS. Based on the problems noted in the USIMINAS' Sales Verification Report, petitioners question the reliability and accuracy of the following reported information in the home market: Taxes, billing adjustments, quantity discounts, other discounts, inland freight, inland insurance, payment date, credit expense, interest revenue, warranty expense, indirect selling expenses, inventory carrying costs, packing expenses, and variable cost of manufacture. Petitioners also question, in most instances, the reliability of the following reported information in the U.S. market: Product characteristics, customer name, date of payment, sales terms, terms of payment, level of trade, domestic inland freight, domestic brokerage and handling, international freight, destination, credit expense, interest revenue, warranty expense, indirect selling expenses, packing expenses, and variable costs. Petitioners recommend that the Department apply as total adverse facts available, the highest rate calculated in the petition, 85.71%.

Petitioners likewise state that based on multiple problems with COSIPA's sales verification, the Department should apply total adverse facts available. Petitioners specifically reference the Department's inability to complete all of the pre-selected and surprise sales trace examinations in the home market and the U.S. market. Petitioners question the reliability and accuracy of the following reported information in the home market: value-added tax credits on production inputs, billing adjustments, quantity discounts, other discounts, inland freight, inland insurance, payment date, credit expense, interest revenue, warranty expenses, indirect selling expenses, inventory carrying costs, packing expenses, and variable cost of manufacture. Petitioners question, in most instances, the reliability of the following reported information in the U.S. market: product characteristics, customer name, order date, sale date, date of shipment, date of payment, sales terms, terms of payment, quantity, level of trade, domestic inland freight, domestic brokerage and handling, destination, credit expense, interest revenue, warranty expense, indirect selling expense, packing expense, and variable costs.

As further argument that the Department should apply total adverse facts available in this case, petitioners state that the Department was unable to verify the accuracy of the date of sale reported by COSIPA for home market sales. Petitioners refer to the COSIPA verification where the Department requested specific documents for ten additional home market sales. Petitioners state that since the Department only received one document for a limited number of the requested sales, that the Department cannot be confident that the appropriate date of sale was reported for home market sales. Petitioners also maintain that other problems discovered at verification are cause to use total facts available. Petitioners refer to COSIPA's omission of supplementary notas fiscais issued during the period of investigation, the Department's inability to verify the reported order confirmation date, and instances where the Department requested but did not receive sales process information and documentation. Furthermore, petitioners refer to problems with verification of COSIPA's quantity and value. Petitioners highlight instances where the company neglected to report certain home market sales to the Department for more than one customer. Petitioners recommend that the Department apply as total adverse facts available, the highest rate calculated in the petition, 85.71%.

Respondents do not feel that the information willingly submitted by

USIMINAS and COSIPA satisfies the high threshold for the application of total adverse facts available. Respondents refer to Borden, Gooch Foods and Hershey Foods v. United States, 4 F. Supp. 2d. 1221, 1244 (CIT 1998) (Borden Foods), to support their opinion that it is not proper for the Department to apply total adverse facts available in this investigation. Respondents provide several facts to support their claim that they cooperated fully in these proceedings. First, respondents point to the number of questionnaire and supplemental questionnaire responses that they have submitted in this investigation as evidence that they have fully cooperated. In addition to the numerous questionnaire responses, respondents note the refinements to submitted data that were researched by hand, such as multiple payment dates, calculating actual freight amounts, creating additional CONNUMS for unique qualities, creating additional methodologies to report missing carbon and yield strengths, and designing and implementing complicated computer programs to extract scope merchandise based on chemical composition. Respondents refer to NSK Ltd. and NSK Corp. v. United States, 919 F. Supp. 422, 448 (CIT 1996) (NSK Ltd.) and Ferro Union v. United States, Slip Op. 99–27 (CIT March 23, 1999) (Ferro Union), as support for their argument that the Department should not accept petitioners' suggestion that it disregard months of work on USIMINAS' and COSIPA's parts in lieu of total facts available since they cooperated throughout the proceeding. Second, respondents state that the USIMINAS and COSIPA opened up company books, records, and computer systems to Department officials during verification. Respondents state that they brought representatives of the affiliated resellers to their own locations to provide source documentation and maintain that they prepared volumes of information for verification. Respondents argue they did not hamper the investigation in any way and state that it was only when the companies were faced with unrealistic demands at verification that they were unable to provide all the information sought by the Department.

Respondents refute petitioners' claim that much of the submitted data was unverified, claiming that value and volume, product characteristics, date of sale, sales processes, accounting processes, corporate structures, and production processes were fully verified. Respondents assert that quantity and value were verified and that any discrepancies were either noted at the beginning of verification, or minor errors discovered during the course of verification. Respondents state that petitioners did not allege any significant errors regarding the quantity and value of respondents' reported sales. Respondents maintain that the Department reviewed and verified the sales processes of the companies and that the verification reports did not note significant discrepancies. Respondents believe that the verification reports substantiate respondents' claims that order date should not be used for date of sale purposes. Respondents point out that no discrepancies were noted in the verification reports regarding the Department's review of production processes and facilities, the explanation of the classification of products, and plant tours. Respondents cite Asociacion Colombiana de Exportadores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989) (Asociacion Colombiana) as further evidence that the verification deficiencies of minor expenses are not enough to justify the use of total adverse facts available.

Respondents state that petitioners' claim that Department verifiers were unable to verify USIMINAS' and COSIPA's sales data is incorrect. Respondents maintain that the Department's sampling of the selected sales traces was reasonable and therefore, the sales information should be considered verified. Respondents point to the number of home market sales traces that were completed by the Department and state that the spot checks of the other traces in conjunction with the separate verification of the allocated expenses constitute verification of sales data.

Respondents also state that petitioners do not point to basic problems or flaws with the sales data actually reviewed. Respondents assert that petitioners focus on the Department's inability to review information at verification, and that it would be inconceivable for the Department to apply total facts available simply because the Department did not review all the fields of all of the sales traces. Respondents state that petitioners incorrectly make the assumption that the Department's inability to verify certain subjects means that those subjects were not considered verified. Respondents maintain that the Department's failure to review an item does not mean that the item is not verified.

Respondents also state that petitioners are incorrect in asserting that COSIPA did not report certain home market sales. COSIPA maintains that these sales had been previously reported, but had been inadvertently omitted from the March 1, 1999 submission of data. COSIPA states that these sales were corrected and reported at verification.

Department's Position: The Department disagrees with petitioners' call for total adverse facts available for USIMINAS and COSIPA. While the Department acknowledges that there were multiple problems at the sales verifications of USIMINAS and COSIPA, the nature and extent of these problems do not support the use of total facts available. The Department agrees with respondents that the major components of verification verified. These include quantity and value, production characteristics, and sales and accounting processes. By contrast, the majority of the information that did not verify generally constituted relatively minor issues and adjustments. The Department does not find that the inability to complete all of the pre-selected and surprise sales traces is substantial enough in this case to necessitate the use of total facts available.

Respondents' reference to Borden Foods, however, is off point. In the Borden Foods case, the Court did not disagree with the Department's use of total adverse facts available. Instead, that case dealt with the subject of corroboration of the facts available margin imposed in that proceeding.

Further, the Department disagrees with respondents' assumption that the Department's failure to review certain items at verification equates to the verification of those items. As stated in USIMINAS' and COSIPA's Sales Verification Reports, there were numerous instances in which the Department sought to cover certain items, and the respondents declined for reasons described in the report. These items do not have the same status as items which the Department chooses not to raise at verification. The Department considers these items which were raised by the Department, but not addressed by the respondents, to be unverified. Please see Comment 13 on What Constitutes Verification for a complete discussion of this issue.

While the Department does not find the use of total facts available appropriate in this investigation, there were several instances which merited the use of partial facts available. See the comments below for specific applications of facts available.

Comment 16: Use of Facts Available. Petitioners state that if the Department decides to accept USIMINAS and COSIPA's questionnaire responses, facts available must be applied in certain instances as described in several comments below.

Respondents refer to Borden Foods in asserting that the Department must use caution in applying facts available, but respondents suggest that the Department use facts available in certain instances as described in specific comments below. Respondents also refer to National Steel in stating that the Department should not make adverse inferences where respondents have acted to the best of their ability and the error is minor.

To support their claim that verification problems were insignificant, respondents cite NSK Ltd., which in turn cites Ad Hoc Comm. Of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, 865 F. Supp. 857, 866, (CIT 1994), stating, ''Neutral BIA is 'applied only to a respondent who has substantially complied and there is also an inadvertent or unavoidable gap in the record, or when a minor or insignificant adjustment is involved.' '' 919 F. Supp. at 448.

Department's Position: As discussed in the Facts Available section above, the Department has determined that facts available should be applied for certain sales adjustments and expenses. The Department gave USIMINAS and COSIPA substantial opportunity to verify multiple outstanding issues at the sales verification. As noted in the Sales Verification Reports for both companies, respondents were either unable to or unwilling to verify these issues. The agendas were provided to respondents prior to verification, and the information was repeatedly requested by the Department officials at the verification. In instances in which the material remained unverified, the Department applied facts available. In several instances, because the respondents failed to cooperate to the best of their abilities, the Department applied adverse facts available in accordance with section 776(b) of the Act. See the individual comments below for specific applications of facts available and adverse facts available.

In reference to Borden Foods and National Steel, the Department notes that these cases were not governed by the current statute, and the use of adverse inferences is now governed by section 776(b) of the Act. Moreover, respondents' reference to Borden Foods is off point. See Comment 15 above. In addition, respondents' reliance on National Steel in asserting that the Department should not make adverse inferences in the application of facts available is misplaced. Further examination of National Steel supports the use of partial facts available ''when only part of the submitted information is deficient,'' and the use of an adverse inference ''depend[ing] on the level of sufficiency of the information provided.'' 919 F. Supp. at 442.

Comment 17: Collapsing USIMINAS AND COSIPA. Respondents assert that the Department's decision to collapse USIMINAS and COSIPA into a single company for purposes of calculating dumping margins, a single average cost of production and unified average prices was incorrect. Respondents do not dispute two of the criteria used by the Department in making this determination: (1) The two companies manufacture substantially similar products and (2) USIMINAS has a high level of direct ownership in COSIPA. They do, however, dispute the Department's determination that there is some intertwining of operations and do not believe that USIMINAS is in a position to manipulate COSIPA's prices or production. Though USIMINAS is the largest shareholder in COSIPA and appoints two members to its Administrative Council, respondents argue that USIMINAS'' influence is limited. Respondents state that the Administrative Council focuses on ''large-impact corporate decisions'' and not pricing. They also indicate that each company's Directorate, where pricing and sales policies are discussed, is composed entirely of its own employees with neither company appointing directors of the other. Citing their letter of February 9, 1999, respondents note that the companies maintain separate and distinct sales staff and offices, do not make joint sales calls, meet with their own customers, and determine prices separately.

Respondents contest the Department's view that USIMINAS and COSIPA have some intertwining of operations as shown by the supply of technology from USIMINAS to COSIPA. They state that this supply has to do with the sale of computer programs and discussions on optimizing productivity of equipment, but nothing to do with the pricing or marketing of products. For all these reasons, respondents do not believe that there is a basis for collapsing USIMINAS and COSIPA to determine dumping margins.

Petitioners disagree with respondents' argument that USIMINAS'' and COSIPA's operations are not sufficiently intertwined to justify collapsing the two companies. First, they cite the Preliminary Results and Partial Rescission of Antidumping Administrative Review of Sulfanilic Acid from the People's Republic of China, 61 FR 29073, 29075 (June 7, 1996) and the Fresh Cut Flowers, 61 FR 42833, 42853, arguing that substantial intertwining of operations is not a necessary precondition to collapsing where evidence on the other collapsing factors is sufficient to indicate a significant possibility of price manipulation and where determinations are made based on the totality of the circumstances. Secondly, petitioners refer again to Fresh Cut Flowers in arguing that the lack of current intertwining of operations does not establish that there is no potential that such will occur. They believe that the circumstances of this case indicate the significant potential for such intertwining to occur.

Petitioners contest respondents' assertion that USIMINAS and COSIPA were improperly collapsed for this investigation. Citing the Department's findings in the U.S. Department of Commerce Internal Memorandum from R. Weible for J. Spetrini, Case No. A–351–828 (December 22, 1998) (''Collapsing Memorandum''), petitioners state that the first prong of the collapsing test, that both companies' facilities and products were similar enough so as not to require substantial retooling in order to restructure manufacturing priorities, had been met. Regarding the second prong of the test, in which the Department examines the potential for price manipulation or production, petitioners state that there are three relevant factors the Department considers as listed in the Collapsing Memorandum. They note that all three factors need not be present in order to find significant potential for price or production manipulation. Petitioners point out that respondents conceded that the first two factors, a high level of common ownership and common employees or board members, are present in this case. They also refer to the Collapsing Memorandum, in which the Department found that the third criterion of intertwined operations was met by virtue of transferred technology. Petitioners reiterate that even though all three factors need not be present, the Department's findings and the record show that all three are present and sufficiently demonstrate the significant potential for price or production manipulation.

Department's Position: The Department agrees with petitioners. On December 22, 1998, the Department outlined in its Collapsing Memorandum referenced above its decision to collapse USIMINAS and COSIPA. For this final determination, we have continued to collapse these two companies. Because the Department is concerned with price and cost manipulation, it must ensure that reviewed companies ''constitute separate manufacturers or exporters for purposes of the dumping law.'' See, Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain, 53 FR 24335, 24337 (June 28, 1988). Where there is evidence indicating a significant potential for the manipulation of price and production, the Department will ''collapse'' related companies; that is, the Department will treat the companies as one entity for purposes of calculating the dumping margin.

Before considering whether companies should be collapsed, the Department must first find that the companies in question are affiliated within the meaning of section 771(33) of the Act. As outlined in the Department's Collapsing Memorandum, USIMINAS and COSIPA meet the criteria for affiliation which is undisputed by respondents. Under § 351.401(f)(1) of the Department's regulations, to determine whether to collapse, we examine whether the affiliated producers have similar production facilities, such that retooling would not be required to shift production from one company to another, and if there is significant potential for the manipulation of prices or production. USIMINAS and COSIPA meet the first prong of this test since they are both fully integrated producers of steel offering a similar range of products. See the Collapsing Memorandum for further discussion of this issue. In examining the potential for the manipulation of price or production, the Department considers the following: (1) The level of common ownership; (2) the existence of interlocking officers or directors; and (3) the existence of intertwined operations. The Department notes that section 351.401(f)(2) states that all three factors need not be present to find a significant potential for the manipulation of price or production.

Since USIMINAS is the largest single shareholder in COSIPA, owning 49.79% of its voting stock, the level of common ownership is significant. USIMINAS' Chairman of the Board (or Administrative Council) and USIMINAS' Director both serve on COSIPA's board of directors. See COSIPA Verification Exhibit 1 at 7 and USIMINAS Verification Exhibit 2 at 6. Regarding intertwined operations, as noted in the Collapsing Memorandum, Brazil's Securities Commission reports that USIMINAS has supplied COSIPA with technology. USIMINAS and COSIPA, together with CSN, also joined in a consortium to buy a controlling interest in MRS Logistica, a rail transport company. Additionally, USIMINAS, COSIPA, and CSN cooperate in the buying of imported coal.

Even if the degree of intertwined operations between USIMINAS and COSIPA is insufficient by itself to find a potential for the manipulation of prices or production, we rely on the totality of the circumstances in deciding this issue. See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Product, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, 37159 (July 9, 1993), (Japanese Steel). The Department finds that the preponderance of evidence on the record indicates a significant potential for USIMINAS and COSIPA to manipulate prices or production. Since the criteria outlined in § 351.401(f)(1) of the Department's regulations have been met, the Department is continuing to collapse USIMINAS and COSIPA in this final determination.

Comment 18: Downstream Sales/ Level of Trade. Petitioners state that due to the Department's inability to verify downstream sales data, facts available should be applied for the final determination. Petitioners recall that in the Preliminary Determination, the Department used facts available because the reported downstream sales data was incomplete and not useable. Petitioners state that problems with the verification of downstream data (*e.g.,* the Department was unable to verify quantity and value for the downstream companies, USIMINAS was unable to provide information requested by the verifiers regarding the completeness of sales through one of the downstream companies, and the Department's inability to verify the sales process of some downstream companies) necessitate the use of facts available. Petitioners also maintain that the Department's inability to verify the respondents' LOT claims make it impossible to determine if different levels of trade exist. Petitioners state that because of these problems, the Department must resort to facts available. As facts available, the petitioners recommend that the Department apply the same facts available methodology that was applied in the Preliminary Determination.

Respondents believe that the Department inaccurately portrayed the fact that the Rio Negro was not verified by making the statement, ''USIMINAS said it preferred to review other topics instead.'' They argue that a more accurate representation is that the Department's verification methods prevented respondents from presenting all information requested in the outline in the manner desired by the Department. These methods included spending a ''full day and a half reviewing USIMINAS' corporate structure and price fixing allegations,'' a full day reviewing USIMINAS' other downstream affiliate, Fasal, and not following the recommendation in Chapter 13 of its Antidumping Manual on setting verification priorities. Moreover, respondents suggested that the verification of Rio Negro take place at COSIPA's offices because USIMINAS and COSIPA were collapsed for this investigation, because it would save time at USIMINAS, and because Rio Negro's facilities were closer to COSIPA. For all of these reasons, respondents made clear that it preferred to move on to topics other than Rio Negro.

Respondents maintain that the petitioners overstate claims that the Department's verification reports note several flaws and problems with the USIMINAS and COSIPA verifications. Respondents state that petitioners focus too much emphasis on respondents' downstream sales data, and that petitioners misquote portions of the verification reports. Respondents state that many of the flaws pointed out by petitioners are not flaws, but rather items that the Department was not able to verify because of time constraints.

Respondents state that the Department should disregard petitioners calls for the use of facts available in lieu of respondents' downstream sales data. While the respondents agree that the Department officials were unable to review much of the affiliates' downstream sales data, they state that there was not enough time allotted to the verification to allow for the review of the downstream data. Respondents maintain that it would be incorrect for the Department to resort to facts available based on the fact that all downstream sales data were not verified. Respondents have maintained throughout the proceeding that the Department should not use downstream data in calculating margins since these sales account for a small percentage of the respondents' home market sales, are physically different products, and are made at a different LOT. Respondents also note that it was very difficult for the companies to gather the downstream data as requested by the Department. Respondents maintain that based on the facts listed above, the Department should simply disregard downstream sales. Respondents state that if the Department does not choose to disregard these sales, facts available should not be used. Rather, respondents suggest the Department should use the downstream information reported because the downstream companies provided this information to the best of their abilities. Respondents state that section 782 of the Act provides that the Department should not disregard the information submitted by an interested party if it has acted to the best if its ability, and that the Department should take into consideration any difficulties experienced by interested parties in providing information to the Department.

Department's Position: The Department agrees in part with both petitioners and respondents. At verification, the Department requested to cover LOT, but respondents indicated they preferred to move on to other topics. We repeatedly asked to return to this issue, but were unsuccessful. Because respondents showed no cooperation in verifying this topic and the burden is on respondents to support all LOT claims, we are not making an LOT adjustment. See Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 63 FR 13205, 13206 (March 18, 1998) (''the burden is on a respondent to demonstrate that its categorizations of LOT are correct.'')

The Department was also unable to verify most issues regarding the affiliated downstream companies. We were unable to verify quantity and value for any downstream entity. We were only able to verify portions of one sales trace and product characteristics for one downstream company. There were many variables for this sales trace that we could not verify. Therefore, pursuant to section 776(a)(2)(D) of the Act, we must us the facts available. Respondents suggest that the verification of downstream companies was burdensome, but upon receiving the verification outline, they did not indicate that they were unable to comply with this section. See section 782(c)(1) of the Act. The Department made repeated attempts to verify downstream sales information, but respondents declined to cover these topics. For these reasons we find that respondents failed to cooperate to the best of their abilities and pursuant to section 776(b) of the Act, the Department is applying adverse facts available to downstream sales.

As adverse facts available, the Department used the downstream data reported by USIMINAS and COSIPA for CONNUM matching purposes only. In cases in which the best match is to a downstream home market sale, we applied as adverse facts available the highest calculated margin for any USIMINAS/COSIPA CONNUM. The Department finds that this margin is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

The approach proposed by petitioners—using only identical matches at the same LOT—is not appropriate for several reasons. First, as noted above, because respondent did not support its claims for multiple LOTs, we are determining there is a single LOT for all U.S. and home market sales for this final determination. Second, we are able to calculate difference in merchandise adjustments for this final determination, because the deficiencies in the cost data at the time of the preliminary determination have been subsequently remedied.

Comment 19: Date of Sale. Petitioners assert that the verifications of USIMINAS and COSIPA establish that documents issued long before the commercial invoice memorialize the agreed terms of sale. USIMINAS sends the customer an export contract which sets out the general terms of sale, including price and quantity. The attached order confirmation specifies quantity, price, tolerances, order date, and expected delivery date. Similarly, COSIPA's export contract specifies the estimated delivery time, sales conditions, payment terms, and the date of issuance. Attachments to this document specify dimensions, price, quantity, and tolerances. See USIMINAS'' Sales Verification Report, p. 15 and COSIPA's Sales Verification Report, p.10.

Petitioners maintain that USIMINAS'' and COSIPA's shipment data likewise indicate no change in material terms which invalidate order confirmation or export contract date as the date of sale. In the great majority of instances, petitioners argue that shipments were within contract tolerances. Even where quantity tolerances are not met, petitioners note that the price was unaffected. Petitioners conclude that invoice date is not acceptable as the date of sale for USIMINAS and COSIPA. Therefore, the Department should use the order confirmation date, or alternatively, the export contract date, which is available for most U.S. sales.

Respondents counter that the Department was correct in using the date of nota fiscal as the date of sale for home market sales and relying on the commercial invoice date for USIMINAS and the nota fiscal date for COSIPA in its Preliminary Determination. According to USIMINAS/COSIPA, the Department's regulations make clear that the ''invoice'' date is the preferred sale date because it simplifies reporting and verification of information and accommodates changes that often occur up to the invoice date. In support of this argument, they cite the Department's Antidumping Regulations, 62 FR 27296, 27348 (May 19, 1997). Moreover, USIMINAS and COSIPA state that their sales terms are not set with finality until the invoice date. Respondents assert that Department verifiers were unable to locate any retrievable date to use as the ''order'' date. (See USIMINAS'' Sales Verification Report, pp. 12–16.) Therefore, the Department should continue to use the invoice date as the date of sale for the final determination.

Respondents also raise several issues related to the Department's methodology in verifying date of sale and the discussion of the issue in the USIMINAS and COSIPA verification reports. They dispute the Department's phrasing that ''it was not possible to verify USIMINAS'' order dates due to the apparent unavailability of certain documents.'' They believe that a more accurate statement would have been that respondents ''do not reliably keep order confirmation date information in their normal course of business.'' Respondents assert that they made clear in prior submissions that they could not provide this information because they do not reliably keep such records in their normal course of business. They also state that the Department spent significant time at verification searching for order date information and that the Department's verification report supports their claim that these documents are elusive, not that they are not verified.

USIMINAS points out that while the Department did not receive alteration history screens for all sales traces as requested, it did receive printouts of this document for ''nearly all'' of the sales traces. It adds that copies of the screens were presented on the last day of COSIPA's verification, but the Department did not choose to take all of them. Additionally, USIMINAS states that the computer screens themselves, if not actual copies, were available to the verifiers. Respondents argue that the Department spent ''considerable time reviewing information that appears to be more relevant to costs than to sales.'' They find it conceivable that the Department originally sought this information to address the order date issue, but believe that the Department's focus was more on production and cost information. Respondents cite as evidence of this that the Department insisted on visiting the control tower, witnessing the types of computer reports used to generate production reports, and later meeting with production planning staff.

Respondents believe that the amount of time devoted to the order confirmation and date of sale issues and the level of detail sought by the Department limited the amount of time that could be devoted to other topics. Respondents note the number of pages written by the Department about the topic and comment that the discussions included details about their price circulars, location and responsibilities of each sales office, the method by which the mill is contacted, time and manner of computer record keeping, and the frequency of internal sales meetings. Respondents argue that despite their indications that order confirmation information was not stored in the computers in any organized fashion, the Department spent considerable time at both USIMINAS and COSIPA learning more about the order confirmation process, reviewing computer records, and asking for production records.

Department's Position: The Department disagrees in part with both petitioners and the respondents. The date of sale is the date on which all substantive terms of sale are agreed upon by the parties, including the price, quantity, delivery and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. For example, in Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale. In addition, it is the Department's practice not to use a date of sale that falls after the shipment of the product from the factory for delivery, *e.g.* an ex-port shipment date. This practice is dictated by the fact that a customer's price and quantity would rarely, if ever, change after a delivery has commenced.

The Department agrees with the respondents that the nota fiscal is the correct date of sale in the home market. The nota fiscal represents the first point at which USIMINAS'' and COSIPA's records can establish that the material terms of sale are set, it is issued as products leave the factory, and it serves as the invoice. For this final determination, the Department will continue to use the nota fiscal as the date of sale in the home market for both USIMINAS and COSIPA.

For COSIPA's U.S. date of sale, the Department agrees with the respondent that the commercial invoice represents the correct date of sale. The terms of sale are set at this point, and the commercial invoice is generally issued at the same time that the subject merchandise leaves COSIPA's factory. See COSIPA's Sales Verification Report, p. 11.

For USIMINAS, the Department disagrees with the respondent that the commercial invoice represents the correct date of sale in the U.S. market. The commercial invoice is issued when the merchandise is shipped from the port. As noted below, we explicitly instructed USIMINAS that date of sale may not be after the merchandise was shipped from the factory. Because the terms of sale are set at the issuance of the nota fiscal (as acknowledged by USIMINAS on page 32 of the November 16, 1998 Section A Response and verified by the Department) and the nota fiscal represents an ex-factory, not export shipment date, the Department finds that nota fiscal is the correct U.S. date of sale.

The Department notes that petitioners argue that order confirmation is the correct date of sale in both the home and U.S. markets. However, as indicated in USIMINAS' Sales Verification Report at 15 and Exhibit 7 of the January 19, 1999 Supplemental Section A Response, there is evidence of significant change in the terms of sale, specifically quantities exceeding tolerances, between the issuance of the order confirmation and the nota fiscal. The Department was also able to verify respondent claims that they are unable to reliably report order confirmation as their U.S. or home market date of sale. See USIMINAS Sales Verification Report at 18 and COSIPA Sales Verification Report at 14. Since the record does not establish that order confirmation best reflects the date at which the terms of sale are set, and it is difficult or impossible for respondents to report this date, the Department does not consider order confirmation the appropriate date of sale.

In reference to USIMINAS' U.S. date of sale, the Department specifically requested in its supplemental questionnaire to USIMINAS' Section A Response (December 4, 1998) that USIMINAS report:

> all sales for which ''the order confirmation date (or comparable date if data on order confirmation does not exist) was within the POI. If you believe another date is a more appropriate date of sale, you should provide all sales during the POI based on order confirmation date, using alternative production or accounting records, and the other date (*provided the other date is not after the merchandise is shipped from the plant*). (emphasis added)

In our January 4, 1999 Supplemental Questionnaire to Sections BCD, we repeated this question and added:

> If USIMINAS chooses not to report order confirmation date, and we determine at verification that this information is available and is a more appropriate date of sale than that reported, USIMINAS may be subject to the use of adverse facts available pursuant to section 776 of our statute.

USIMINAS, however, continued to report the commercial invoice date as the date of sale even though this date is after shipment from the factory, and it did not report all sales during the POI based on an ex-factory date of sale. Since USIMINAS failed to follow explicit instructions in the questionnaire, or to contact the Department to determine whether an alternate reporting basis was appropriate, we find that USIMINAS did not cooperate to the best of its ability. Therefore, we are applying adverse facts available for the sales that were not reported based on an ex-factory date of sale. For the unreported sales we estimated the average number of days between the ex-factory shipment date and the commercial invoice date, using USIMINAS' submitted data. We then estimated the value of USIMINAS' unreported sales for the estimated amount of time using the data USIMINAS submitted for purposes of our critical circumstances analysis. See USIMINAS/COSIPA's Analysis Memo. We applied the highest margin calculated for any CONNUM to this value. The Department finds that this margin is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

In reference to respondents' general comments regarding date of sale issues discussed in the Department's verification reports, the Department did seek information on production in order to understand the order confirmation process. Both respondents and petitioners in this investigation have spent considerable time analyzing and writing about date of sale. Date of sale is an important issue in this investigation and the amount of time spent reviewing the topic was merited and within Departmental practices.

Comment 20: Contracts with affiliated suppliers—USIMINAS. The respondent believes that the statement, ''USIMINAS did not provide any contracts with affiliated suppliers'' should have been further explained. USIMINAS argues that its rail contracts were not presented because they do not exist. They further assert that the Department acknowledged this by saying, ''USIMINAS stated that Rios Unidos does not have exclusive agreements with any of these companies'' and ''USIMINAS said that CVRD negotiates and sells separately to its customers and they do not have any special buying arrangements together with CSN and COSIPA.''

Petitioners believe that the Department's conclusion that USIMINAS failed to provide the requested documentation was correct. Petitioners argue that statements asserting that such contracts do not exist do not constitute verification. Furthermore, they note that the lack of ''exclusive agreements'' does not demonstrate that USIMINAS had no contracts whatsoever with affiliated suppliers. Petitioners believe it is also unclear how the stated absence of a ''special buying arrangement'' between CVRD, CSN, and COSIPA indicates that USIMINAS had no contract with CVRD. Petitioners maintain that because USIMINAS did not provide the requested contracts with affiliated suppliers, the Department should make an adverse inference with respect to the costs of materials purchased from affiliated suppliers such as iron ore and coal. Petitioners state that the respondent's cost of production should be increased as facts available.

Department's Position: The two statements about USIMINAS' contracts with Rios Unidos and CVRD were taken out of context. These sentences referred to contractual agreements between all three of the respondents (CSN, COSIPA, USIMINAS) and affiliated suppliers, and not to individual contracts USIMINAS had with affiliated suppliers. Furthermore, the fact that USIMINAS asserted that it did not have any special or exclusive buying relationship in concert with all respondents or individually is not the same thing as saying that it had no contract with its affiliated suppliers. See Comments 49 and 50 for a complete discussion of the costs of iron ore and coal.

Comment 21: Fasal's Commissions—USIMINAS. Petitioners state that since the Department was not able to verify the reported commission for Fasal's (one of USIMINAS/COSIPA's affiliated resellers) home market sales, the Department should deny the commission adjustment as facts available.

Department's Position: Because the Department was unable to verify downstream sales, including Fasal's sales, we have based the margin for all U.S. sales matching to any of respondent's downstream sales solely on adverse facts available. Therefore, we need not reach the question of commission adjustments. See Comment 18 on Downstream Sales/Level of Trade for a complete discussion of the downstream sales issue.

Comment 22: Fasal's Inventory Carrying Costs—USIMINAS. Petitioners state that the Department's inability to verify Fasal's reported inventory carrying cost necessitates that the Department apply adverse facts available.

Department's Position: We are not using inventory carrying costs in our analysis because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 23: Theoretical weight sales—USIMINAS. The respondent disagrees with the Department's conclusion that the gross unit price calculations for a small number of sales made on a theoretical weight basis is unverified. USIMINAS does not dispute that it made a clerical error in its calculation and reporting of these sales, and that this error was discovered during verification, not at the beginning of it. However USIMINAS states that it provided the Department with a reconciliation worksheet correcting the prices and quantities. The respondent points out that the impact of the error is minuscule, the Department is emphasizing a clerical error, and USIMINAS found the error in a voluntary attempt to revise unusual transactions in its database.

Petitioners argue that all U.S. sales made on a theoretical weight basis had incorrectly calculated gross unit prices. Petitioners state that theoretical weight sales were only made in the United States. Petitioners feel that the Department should apply facts available to all U.S. sales made on a theoretical weight basis by assigning the highest margin alleged in the petition, 85.71%.

Department's Position: Regarding USIMINAS' U.S. sales made on a theoretical weight basis, we agree with respondents. At verification, USIMINAS realized that a clerical error had been made in the computation of gross unit prices on this small number of sales. USIMINAS presented the Department with a list of revised gross unit prices during the verification. Given the nature and extent of the error, the Department accepted these revised prices and has used them in the final calculations. See USIMINAS' Sales Verification Report, Exhibit 31, and USIMINAS/COSIPA's Analysis Memo.

Comment 24: Indirect Selling Expenses—USIMINAS. USIMINAS believes that the Department's statement that it was unable to verify indirect selling expenses for a certain transaction because of mistakes discovered at verification is a mischaracterization that is contradicted by the Department's report. It argues that this shows the Department does not realize this is an allocated expense which is applied across the board to all sales. Respondents also state that the Department verified indirect selling expenses on page 58 of the verification report.

Petitioners state that based on errors in the calculation of U.S. indirect selling expenses found at verification, the Department should apply as facts available the highest indirect selling expense amount reported on the USIMINAS U.S. or home market sales databases.

Respondents dispute petitioners' proposal for facts available and state that a reasonable facts available approach would be to use COSIPA's indirect selling expenses for USIMINAS since the two companies are collapsed for the purpose of this investigation.

Department's Position: We are not using indirect selling expenses in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 25: Home Market Inland Freight—USIMINAS. USIMINAS believes the Department made a false statement in saying that USIMINAS did not have anything prepared to prove that transactions with affiliated rail companies were at arm's length. The respondent argues that the Department contradicts this assertion with two statements: ''USIMINAS stated that CVRD and MRS have no preferential arrangement with it even though they are affiliated parties'' and ''USIMINAS also stated that it is difficult to prove this issue because some of the rail companies provide transportation for routes that no other rail company services.'' With these statements, USIMINAS feels it explained this situation and the Department's findings were false.

Petitioners assert that USIMINAS' statements made at verification do not constitute demonstration of a claim. They further note that if verbal explanations rather than concrete documentation were all that was required, there would be no point in conducting verifications.

Petitioners maintain that because the Department was not presented with requested proof that freight transactions with affiliated trucking or rail companies were made at arm's length, the Department should deny the inland freight adjustment for all home market sales.

Respondents reply that petitioners are incorrect and that USIMINAS has no contracts with these affiliated companies and that USIMINAS staff presented oral testimony that the company does not receive preferential treatment from affiliated transportation companies. Respondents state that the Department should reject petitioners' facts available suggestion because it is excessively punitory. Furthermore, respondents claim that since the Department verified the arm's length nature of COSIPA's affiliated freight transactions and since the Department has collapsed USIMINAS and COSIPA, the Department should assume that USIMINAS' affiliated freight transactions were also made at arm's length. Respondents suggest that should the Department reject USIMINAS' reported freight expenses and apply facts available, COSIPA's freight rates should be used as surrogate values for USIMINAS' freight expenses.

Department's Position: The Department agrees in part with petitioners. USIMINAS' assertion that it has no preferential arrangements with CVRD and MRS does not constitute proof that it has no arrangement or contract with these affiliated rail companies or that transactions were at arm's length. As noted in USIMINAS' Sales Verification Report, p. 50, we requested information from USIMINAS showing that its rail and trucking freight transactions were at arm's length. We reminded respondents that an alternative way to demonstrate arm's length transactions to affiliated companies is to show that the transactions were above those companies' costs or that the companies were profitable. Nevertheless, USIMINAS had nothing prepared to demonstrate that the freight charges were at arm's length. After several attempts to verify the arm's length nature of USIMINAS' transactions with affiliated transportation companies, we determined that the USIMINAS claim that these sales are made at arm's length had not been substantiated or verified.

USIMINAS made no attempt to establish that its inland freight transactions were at arm's length, despite the Department's repeated attempts to verify this issue. Further, the Department offered alternative solutions for verifying this topic in accordance with section 782(c)(2), but USIMINAS made no attempt to provide verifying information. Therefore, the Department is applying adverse facts available to USIMINAS' home market inland freight. Accordingly, for sales in which USIMINAS incurred a freight expense, the Department used the lowest value for inland freight reported by USIMINAS. Because we are already making an adverse assumption in assigning inland freight expenses, we are not making an additional adjustment for VAT taxes. See USIMINAS/COSIPA's Analysis Memo.

Comment 26: U.S. Inland Freight—USIMINAS. Petitioners maintain that since the Department was only able to verify the reported inland freight for one U.S. sale, as facts available, the Department should apply to all U.S. sales the highest reported inland freight expense.

Respondents state that petitioners' call for facts available for the inland freight value associated with USIMINAS' U.S. sales should be rejected. Respondents claim that petitioners acknowledge in their case brief that the Department verified USIMINAS' inland freight adjustments, and therefore, the Department should use USIMINAS' reported U.S. inland freight expense.

Department's Position: We agree with petitioners that adverse facts available should be applied to USIMINAS' reported U.S. inland freight expenses. Respondents mis-characterize petitioners' brief by stating that the petitioners asserted that the Department was able to verify this adjustment, when in fact, the brief suggests that the Department was only able to review the U.S. inland freight adjustment for one observation, and the reported amount for that observation did not reconcile to company records. We note that it is not necessary for the Department to verify more than one example of an expense to consider the expense to be verified. See Monsanto v. United States. However, the reported expense for the sale we examined did not agree with the actual expense. (See Verification Exhibit 36). Therefore, we have rejected USIMINAS' inland freight adjustments due to failure of this data to verify and instead have used the facts available, pursuant to section 776(a)(2)(D) of the Act. The unexplained failure of this data to verify demonstrates that USIMINAS failed to cooperate to the best of its ability in responding to our request for inland freight data. Therefore, we are applying as adverse facts available USIMINAS' highest reported amount for inland freight. See USIMINAS/COSIPA's Analysis Memo.

Comment 27: Warehousing Expense—USIMINAS. Petitioners state that since the Department was unable to verify USIMINAS' U.S. warehousing expenses, facts available should be applied. Petitioners argue that since USIMINAS claims to have reported these expenses with the indirect selling expenses that as adverse facts available, the Department should treat all of USIMINAS' reported indirect selling expenses as direct selling expenses.

Department's Position: We disagree with petitioners. Respondent consistently told the Department that it was unable to segregate warehousing expenses from its indirect selling expenses and that it had reported warehousing as part of these expenses. See USIMINAS' Section B response at B–41 and Section C response at C–38 (December 21, 1998). Therefore, we have accepted respondent's data, as reported, and are not reclassifying respondent's indirect selling expenses as direct selling expenses for this final determination.

Comment 28: Inland Insurance—USIMINAS. In referring to inland insurance for home market sales, petitioners state that since the Department was not able to completely verify the reported amounts, for all home market sales, the inland insurance adjustment should be denied as adverse facts available.

Department's Position: We disagree with petitioners that adverse facts available should be applied to USIMINAS' reported inland insurance expenses. At verification, the Department verified USIMINAS' nominal rate, discount rate, and reported rate. We were satisfied with the verification of USIMINAS' reported expense. In an April 22, 1999 letter to respondents, we requested that USIMINAS correct the reported inland insurance amount to include IOF taxes and fees. We accept the reported amount and adjusted for the inland insurance amount accordingly.

Comment 29: Billing Adjustments—USIMINAS. Petitioners maintain that USIMINAS incorrectly included canceled sales (sales in which the billing adjustment is equal to the gross unit price) within the billing adjustment field of its home market database. Petitioners state that these sales should be removed. Petitioners also reference an error discovered at verification in which the reported billing adjustment for observation 52003 was incorrectly reported. Petitioners state that the adjustment for this transaction should be denied.

Department's Position: We agree with petitioners that canceled sales should be removed from the database and have done so for this final determination. We also agree that there was an error with respect to the observation cited by petitioners and the billing adjustment should be denied for this sale.

Comment 30: Warranty Expense—USIMINAS. Petitioners maintain that because the Department was unable to verify USIMINAS' warranty expense, the Department should apply adverse facts available and deny the adjustment in its entirety.

Department's Position: We determine that adverse facts available should be applied to USIMINAS'' reported warranty expense. As noted in USIMINAS'' Sales Verification Report, at 57, we requested to verify warranty expenses several times but USIMINAS asked to skip this topic. Thus, despite our repeated attempts to verify this data, we were unable to do so. By declining our request to verify warranty expenses, USIMINAS did not cooperate to the best of its ability. Therefore, as adverse facts available, we are denying the warranty expense adjustment for all of USIMINAS'' home market sales. Since USIMINAS did not report any warranty expenses for U.S. sales, we are not making any changes to these sales. See USIMINAS/COSIPA's Analysis Memo.

Comment 31: Packing Expenses—USIMINAS. Petitioners state that since the verification of U.S. and home market packing expenses was not completed, the Department should use the highest reported packing expense on the USIMINAS U.S. sales database as the packing adjustment for all U.S. sales. Petitioners then state that for home market sales, the packing adjustment should be set equal to zero.

Respondents disagree with petitioners suggestions for facts available with regard to USIMINAS'' packing expenses. Respondents state that the Department should accept USIMINAS'' reported packing expenses. Respondents maintain that USIMINAS presented information to Department officials at the mill, and that Department staff preferred to return to the head office and after they returned, discovered that they had more questions about the packing expense. Respondents further state that USIMINAS made the packing expense information available to the cost verification team, but that the cost verifiers elected not to examine the documents. USIMINAS maintains that since USIMINAS presented the packing information to the Department, and since verifiers elected not to review the information, the Department should consider the packing expenses verified for USIMINAS.

Department's Position: The Department disagrees with petitioners that facts available should be applied to USIMINAS'' reported packing expenses. Respondent presented information about packing to the verification team at the mill and, subsequent to leaving the mill, the team asked for additional information. We were not able to review this additional information, and requested that the cost verification team review this issue. Due to time constraints, the cost verification team was not able to verify the outstanding questions regarding packing because the Department determined that other issues were more important to verify in the remaining time period. We are therefore accepting USIMINAS'' submitted packing information in this final determination.

Comment 32: Inland Insurance—COSIPA. Petitioners state that, due to errors in the verification of COSIPA's inland insurance, the Department should apply adverse facts available and not make an adjustment for home market inland insurance.

Department's Position: The Department disagrees with petitioners that adverse facts available should be applied to COSIPA's reported inland insurance expenses. At verification, we verified COSIPA's nominal rate, discount rate and reported rate. In an April 22, 1999 letter to respondents, we requested that COSIPA correct the reported inland insurance amount to include certain taxes and fees. We accept the reported amount and adjusted for the inland insurance amount accordingly.

Comment 33: IPI Tax—COSIPA. Petitioners state that due to problems with the verification of the IPI tax, as adverse facts available, the reported tax amounts should be revised downward to reflect the actual amounts paid to the federal government.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported IPI tax. Although the verification did reveal a clerical error on the part of COSIPA in calculating the IPI tax paid to the government for one month of the period of investigation, we do not believe that this error justifies the use of adverse facts available. See COSIPA's Sales Verification Report at 31. The Department is generally satisfied with the verification of the IPI tax. We accept the reported amount and adjusted for the tax accordingly.

Comment 34: Home Market Inland Freight—COSIPA. Petitioners maintain that because COSIPA failed to demonstrate that freight services provided by affiliated parties were made at arm's length prices, the inland freight adjustment should be denied for home market transactions, and for U.S. transactions, the highest reported expense should be applied as domestic inland freight.

Respondents state that COSIPA established the arm's length nature of its transactions with affiliated transportation companies. Respondents state that the Department should reject petitioners' facts available suggestion because it is excessively punitory.

Department's Position: The Department agrees in part with petitioners. The respondent was able to demonstrate that transactions with one of its two affiliated trucking companies were at arm's length. See COSIPA's Sales Verification Report at 39. However, despite the Department's repeated attempts to verify the arm's length nature of transactions with affiliated rail companies including offering alternative solutions for verifying this topic, the respondent failed to cooperate with our verification efforts. Therefore, in accordance with section 782(c)(2), the Department is applying adverse facts available to COSIPA's home market inland freight. Accordingly, for sales in which COSIPA incurred a freight expense, the Department used the lowest value for inland freight reported by COSIPA. Because we are already making an adverse assumption in assigning inland freight expenses, we are not making an additional adjustment for VAT taxes. See USIMINAS/COSIPA's Analysis Memo.

Comment 35: Brokerage and Handling—COSIPA: Petitioners state that because the Department was unable to verify the reported brokerage and handling expenses, the reported amount should be doubled as facts available for all U.S. sales.

Respondents dispute petitioners' interpretation of COSIPA's Sales Verification Report. Respondents interpret the Department's inability to verify the reported brokerage and handling expenses as an indication that the Department simply ran out of time and was therefore unable to review the information. Respondents claim that the Department should consider COSIPA's reported brokerage and handling expenses verified. However, respondents do suggest that the Department use USIMINAS' verified brokerage and handling expenses as facts available for COSIPA in the event that the Department does not consider the COSIPA expense to be verified.

Department's Position: Since the Department repeatedly attempted to verify brokerage and handling, COSIPA declined to review this item within the time frame allotted for verification (see COSIPA's Sales Verification Report at 41), and there is no indication that the reported amounts are accurate, the Department is applying adverse facts available to COSIPA's reported U.S. brokerage and handling. As adverse facts available, we are using the highest reported brokerage and handling amount for all U.S. sales. See USIMINAS/COSIPA's Analysis Memo.

Comment 36: Home Market Credit—COSIPA. Petitioners maintain that due to the Department's inability to verify the reported home market credit expense, as adverse facts available, it should deny the adjustment.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported home market credit expense. As is discussed in the verification report, COSIPA intended to calculate the reported credit expense using the same formula and interest rates as did USIMINAS; however, a clerical error was made by COSIPA when the expense was calculated, and the incorrect factors were input into the credit formula. The Department verified that USIMINAS correctly calculated its credit expense. Furthermore, the Department agrees with USIMINAS and COSIPA that the financing rates received by USIMINAS would be much more conservative than those received by COSIPA or any of the other downstream companies. This can be illustrated by the Brazilian publications of lending rates supplied to the Department by USIMINAS at verification. See USIMINAS' Sales Verification Report and Exhibits 23 and 43. Therefore, the Department recalculated COSIPA's home market credit expense by using the interest rates supplied by USIMINAS to correct for the clerical error discovered at verification. See USIMINAS/COSIPA's Analysis Memo.

Comment 37: Interest Revenue—COSIPA. Petitioners state that because COSIPA did not provide certain documentation at verification, the reported interest revenue (INTREV1H) is called into question, and as adverse facts available, the Department should apply the highest reported amount of interest revenue to all home market sales where interest revenue was reported.

Respondents state that the Department should disregard petitioners' call for facts available for this issue. Respondents' interpretation of the verification report is that the interest revenue amount reported in the INTREV1H field was verified. Respondents state that the verification report indicates that only the highest interest rate used to calculate interest revenue was not documented, and claim that this documentation was not provided because it was not requested.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported interest revenue expense. As is discussed in the verification report, COSIPA stated at the verification that the Department should not adjust for the second interest revenue field (INTREV2H) because COSIPA incorrectly reported the additional interest revenue field. COSIPA explained that the interest rate is negotiated on a sale by sale basis with customers depending on the risk factor associated with the customer. The verification report also notes that COSIPA was unable to provide documentation illustrating the highest interest revenue percentage that COSIPA might assign to any sale. However, the Department did not review any documentation or information that would alter its position in the Preliminary Determination. Based on information reviewed at COSIPA, we consider its reported interest revenue (INTREV1H) to be verified. See COSIPA's Sales Verification Report at 43. We are, therefore, accepting the reported amount for INTREV1H, setting INTREV2H equal to zero, and adjusting for interest revenue as appropriate. For sales with unreported payment dates, we are continuing as we did in the Preliminary Determination to calculate an imputed interest revenue expense for both COSIPA and USIMINAS. See USIMINAS/COSIPA's Analysis Memo.

Comment 38: Inventory Carrying Costs—COSIPA. Petitioners feel that because the Department was unable to verify the reported inventory carrying costs, which were only reported for home market sales, the Department should deny the adjustment as adverse facts available.

Department's Position: We are not using inventory carrying costs in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 39: Indirect Selling Expenses—COSIPA. Petitioners state that COSIPA reported a higher unit value indirect selling expense than the amount discovered at verification. They therefore argue that the Department should apply as adverse facts available the reported indirect selling expenses discovered at the verification.

Department's Position: We are not using indirect selling expenses in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 40: Packing—COSIPA. Petitioners maintain that since the reported packing expenses were unverified, the Department should apply facts available as follows: in the home market, the packing expense adjustment should be denied; in the U.S. market, the highest reported packing expense should be applied to all U.S. sales.

Respondents state that as facts available, the Department should employ USIMINAS' packing expenses to COSIPA on a CONNUM specific basis as a surrogate value. Respondents also state that for any COSIPA CONNUM that does not have a packing expense, the Department should use an average of USIMINAS packing expenses.

Department's Position: We agree with petitioners that adverse facts available should be applied to COSIPA's reported packing expenses. Since the Department repeatedly attempted to verify packing, COSIPA declined to review this item within the time frame allotted for verification (see COSIPA's Sales Verification Report at 45), and there is no indication that the reported amounts are accurate, the Department is applying adverse facts available to COSIPA's packing expenses. As adverse facts available, we are applying the highest reported packing amount to all U.S. sales, and we are denying the packing adjustment in the home market. See USIMINAS/COSIPA's Analysis Memo.

Comment 41: Corporate Structure. USIMINAS disagrees with the use of the phrase ''exercises control'' in the statements ''CVRD is the largest single shareholder in USIMINAS and exercises control in USIMINAS as such'' and ''Previ is the third largest shareholder in USIMINAS * * * and exercises control over USIMINAS by utilizing its voting share as a shareholder.'' Respondents believe that there is no factual evidence to support this language. Since USIMINAS' group of shareholders that vote as one block have 53% of the voting capital and CVRD and Previ have 23.14% and 15% respectively, respondents do not believe these companies can be said to ''exercise control'' over USIMINAS.

Department's Position: The Department does not believe that this clarification adds to or subtracts from its determination regarding collapsing USIMINAS/COSIPA with CSN. See Comment 1 for a complete discussion of the collapsing issue .

Comment 42: U.S. Sales Processes for USIMINAS and COSIPA. USIMINAS states that the Department incorrectly referred to a U.S. company that buys the respondent's products from one of its customers as USIMINAS' customer. USIMINAS pointed out that its contractual relationship is with its own customer, not its customer's customer. Similarly, COSIPA believes that the Department was mistaken in saying that its product is shipped to COSIPA's contractual customer which is a company in the Cayman Islands that facilitates international transactions. COSIPA states that the Department did however correctly describe its U.S. sales process when it stated that ''such sales have 'two financial paths, a financial flow of documents and a physical flow of products.''

Department's Position: The Department agrees with respondents. We recognize that USIMINAS's contractual relationship is with its own customer, not its customers' customers. The Department also recognizes that COSIPA's products are not shipped to the Cayman Island company but wherever the contractual customer directs them to ship the products.

III. Cost Issues

CSN

Comment 43: Adjustments Identified in the Overall Cost Reconciliation. CSN argues that the Department should not adjust the company's reported COP and CV amounts to include the reconciling items shown in the cost reconciliation. Specifically, CSN states that the first reconciling item in question relates to the company's discovery of an overstatement of its inventory values in the normal course of business. This overstatement was found when the company switched to a new financial accounting system in 1997. According to CSN, the company did not reflect this adjustment in its cost accounting system until the new cost accounting systems became fully functional in 1999. Moreover, CSN claims that since the adjustment did not affect monthly POI cost or POI inventory levels it does not impact the reported costs. As for the second reconciling item in question, CSN states that this item relates to the total adjustment needed to reconcile the submitted costs to the costs of goods sold reported on the financial statements. According to the company, this reconciling item is negligible and does not cast doubt on the submitted costs. Moreover, the time and effort required to determine what this small amount represents is simply unreasonable in light of its insignificance. Therefore, CSN argues that no adjustment to the reported costs is necessary.

According to the petitioners, CSN has inappropriately excluded certain costs from the calculation of COP and CV even though they relate to the production of the subject merchandise. The petitioners argue that the Department normally requires respondents to include these types of reconciling items in the reported costs. To support their position, the petitioners cite the Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rod from France, 58 FR 68865, 68873 (December 29, 1993), in which the Department included similar reconciling items.

Department's Position: We agree with petitioners that we should include certain reconciling items in the calculation of COP and CV. As noted by CSN, the first reconciling item in question relates to a difference in production costs that exists between CSN's cost accounting system and financial accounting system. Specifically, the financial accounting system reflects a loss realized on missing raw materials while the cost accounting system does not. Thus, CSN's cost accounting system and financial accounting system generate different results due to this inventory adjustment. (For submission purposes, CSN relied on its cost accounting system to calculate the reported costs.) In such instances where the total costs reported in the cost accounting system differ from the total costs reported on the financial statements, we typically rely on the amounts reported on a company's audited financial statements prepared in accordance with generally accepted accounting principles (''GAAP''), provided that it does not result in distorted per-unit costs. In this instance, we do not find it unreasonable to include raw material write-offs in the reported costs. This practice has been upheld by the Court (see, FAG U.K. Ltd. v. United States, 945 F. Supp. 260, 271 (CIT 1996) (upholding the Department's reliance on a firm's expense as recorded on the firm's financial statements.) and Hercules, Inc. v. United States, 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP).

As for the second reconciling item, which relates to the unreconcilable difference that cannot be explained by CSN, we note that our normal practice is to include such items in the calculation of COP and CV unless respondent can identify and document why such amount does not relate to the merchandise under investigation. See, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15498 (March 31, 1999). (The Department determined that the respondent should include the unreconciled difference between amounts in the accounting records and reported costs in reported costs.) In this case, CSN failed to do so.

Comment 44: Including Foreign Exchange Gains and Losses in SG&A and Interest Expense. The petitioners argue that CSN's exchange gains and losses related to accounts payable for the POI should be included in the company's SG&A expense rate calculation. Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (April 9, 1999) (Comment 16), petitioners assert that exchange gains and losses for accounts payable are related to purchases of raw materials, and that therefore, the Department normally includes them in the COP and CV calculations. In addition, petitioners argue that the Department should include all exchange losses that relate to financing transactions in CSN's financial expense rate calculation.

CSN, on the other hand, claims that exchange gains and losses that relate to both accounts payable and accounts receivable should be included in the company's G&A expense rate calculation. CSN realizes that the Department's normal practice is to include in COP net exchange gains and losses associated with accounts payable but not accounts receivable. However, it contends that the Department should reconsider this policy because no adjustment is ever made to gross unit prices under the antidumping law to account for exchange gains or losses on sales. As an alternative to reconsideration of including gains and losses associated with accounts receivables CSN claims that the Department should simply not adjust the company's price of inputs for exchange gains and losses incurred on accounts payable. Therefore, CSN requests that the Department use the G&A rate presented at verification, exclusive of exchange gains and losses related to accounts receivable and accounts payable, in calculating COP and CV. As for net exchange losses that relate to debt, CSN argues that it has included them in the calculation of

G&A. Thus, the Department would double-count this expense if it also included them in the calculation of the financial expense rate.

Department's Position: We disagree with respondent that exchange gains and losses related to accounts payable should not be included in CSN's G&A rate calculation. We also disagree with CSN that the calculation of COP and CV should reflect exchange gains and losses realized on accounts receivables. As the Department has repeatedly stated, our normal practice is to include a portion of the respondent's foreign-exchange gains and losses in the calculation of COP and CV. Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. (See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (April 9, 1999) (Comment 16); Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea (''ESBR''), 64 FR 14865, 14871 (March 29, 1999) (Comment 7); Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31430 (June 9, 1998) and Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998)). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from the transactions related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. Accordingly, for purposes of the final determination, we have included all foreign-exchange gains and losses in the G&A rate calculation, except for those related to accounts receivable and debt.

As for exchange gains and losses associated with financing transactions (*i.e.*, debt), we agree with the petitioners that the respondent should include them in the calculation of the financial expense rate. We normally include the foreign exchange gains and losses resulting from debt in the calculation of the financial expense rate (see, ESBR). For the final determination, we included the exchange gains and losses generated from financial transactions in the calculation of the financial expense rate and included the exchange gains and losses generated from accounts payable in the calculation of the G&A expense rate.

Comment 45: Unreported COP/CV Data. CSN states that the Department should not apply adverse facts available to those CONNUMS for which they did not provide COP data as of the date of the preliminary determination. CSN notes that it submitted the missing data to the Department following the preliminary determination, which the Department verified during the cost verification.

Petitioners had no comment on this issue.

Department's Position: We agree with CSN. For the preliminary determination, we applied adverse facts available for those CONNUMS for which CSN failed to provide a cost. Following the preliminary determination, CSN submitted revised cost files at our request. CSN filed these cost files on a timely basis and we verified the information contained in these files. As a result, we have used CSN's data.

Comment 46: Major Input Rule in Relation to Electricity Costs. CSN contends that the Department should not increase COP and CV for the difference between the energy costs it incurred and its affiliated suppliers total per-unit COP. According to CSN, the Department overlooked the fact that the company's affiliation to its energy supplier (*i.e.*, Light-Servicios de Electricidade S.A. (''Light'')) has no bearing on prices which Light charges to CSN because the Brazilian government prohibits Light from deviating from the regulated rates. Consequently, CSN claims that it is not reasonable for the Department to compare the transfer price with either the COP or the market price because of the regulatory aspect involved. CSN further notes that it is quite common throughout the world for electricity companies to charge a broad range of rates to different types of customers. For example, utility companies typically charge residential customers a higher rate than industrial users because they require additional lines and converters to supply the electricity. As for Light's reported COP, CSN claims that Light's overall profit recorded on its financial statement proves that the company is not losing money on larger users like CSN. Therefore, the Department should not rely on Light's COP in this instance. CSN also argues that the Department has the discretion to not apply the major input rule (i.e., higher of COP, market value, or transfer price) in this case. Thus, the company concludes that the Department should not apply the major input rule in this instance.

Petitioners state that the Department should revise CSN's reported electricity costs from transfer prices to the affiliate's average COP as done in the preliminary determination. In addition, the petitioners disagree with CSN's arguments that the Department should not adjust the cost for the following reasons. First, petitioners note that CSN's argument that it costs more to supply electricity to residential customers than to industrial users is not supported by the respondent's submitted data. Second, petitioners dispute that the company's overall profitability does not provide any support for the transfer prices to a specific entity. Finally, petitioners maintain that the statute does not specify that inputs which are charged at government rates are exempt from the major input rule (see section 773(f)(3) of the Act). Petitioners further argue that the Department only ignores the major input rule when it involves collapsed entities. Since CSN and Light are not collapsed entities, petitioners conclude that the Department should continue to apply the major input rule to CSN's electricity costs as it did in its preliminary determination.

Department's Position: We agree with respondent that it is inappropriate to apply the major input rule in this instance. The price charged by Light to CSN for electricity is set by the Brazilian government. Accordingly, we have not disregarded the transaction prices between CSN and Light because they are government regulated prices that cannot be affected by the relationship between the parties. As such, the regulated price charged to CSN by Light, which is the same rate charged to other companies in the same general industry, fairly represents market value.

USIMINAS/COSIPA

Comment 47: USIMINAS'' Reported Cost Methodology. Petitioners argue that the Department should resort to total facts available because USIMINAS failed to provide cost data from its normal cost accounting system. Petitioners claim that the system used to derive the cost data (*i.e.*, USIMINAS'' ''Dumping Matrix'') does not calculate costs on a more specific level than the normal cost accounting system. Petitioners assert that the Dumping Matrix results in a loss of product specificity because the system begins with the average slab cost for all grades and sizes of steel, whereas the normal cost accounting system calculates costs at a level of detail which accounts for these differences.

According to petitioners, there were significant differences between the submitted product-specific costs from the Dumping Matrix and product-specific costs from the normal cost accounting system. Petitioners note that all the transformation costs for the selected products were lower in the Dumping matrix system compared to the costs in the normal cost accounting system. Petitioners argue that the total cost captured by the Dumping Matrix system for subject merchandise was less than the total cost captured in the normal cost accounting system, and that thus, the costs could not be tied to the financial accounting system. The petitioners further note that USIMINAS did not provide documentation for the revisions to its standard costs and therefore, the Department could not verify the reasonableness of the standards. Petitioners argue that since the Department was not able to verify these critical data, the Department has no choice but to apply facts available as mandated by the statute. Finally, petitioners argue that the Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior review, as suggested by USIMINAS. Petitioners note that in Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927, 12945–48 (March 16, 1999), the Department applied facts available to adjust for reporting errors despite the fact that the Department had accepted an identical cost system in every other case involving the respondent.

USIMINAS states that the Department should accept the costs as submitted and not resort to facts available. USIMINAS maintains that the cost verification report wrongly criticizes the integrity of the Dumping Matrix. USIMINAS states that the Department's concern about the Dumping Matrix methodology was first raised in the cost verification report. USIMINAS asserts that the cost verification report inaccurately says that ''the Dumping Matrix does not distinguish between grade, width, thickness and process.'' According to USIMINAS, once an adjustment factor is applied to the Dumping Matrix cost then these differences are accounted for.

USIMINAS believes that the Department's concerns about its reporting methodology are based solely on the results of the reconciliation which showed overall hot rolling costs were less in the Dumping Matrix than in the cost accounting system. USIMINAS claims that the cost verification report leaves the wrong impression that the identified methodological difference was for subject merchandise only. USIMINAS claims that the Department did not find that the global costs were wrong in the Dumping Matrix.

USIMINAS argues that it used the Dumping Matrix system in the 1995/1996 cut-to-length plate review and the Department did not question the methodology. USIMINAS asserts that the Department should rely on the Dumping Matrix based on its prior use of the system. USIMINAS alleges that the Department never asked it to resubmit its costs using the financial-cost accounting system and there is nothing in the report that indicates that the Department found methodological differences between the Matrix system and the financial cost accounting system.

USIMINAS contends that the financial-cost accounting system has several shortcomings. The largest is that variances and depreciation are allocated on a factory-wide basis. USIMINAS states that the Matrix system is the only system that correctly assigned variances and depreciation to products. Therefore, it had to resort to the usage of the Dumping Matrix.

Department's Position: We agree with petitioners, in part. We agree that USIMINAS did not use its normal cost accounting system to derive the reported costs and, as a result, it understated its submitted costs. However, because we were able to adjust for the understatement of reported costs, it was not necessary to resort to total facts available.

Because of the ambiguity and numerous inconsistences in USIMINAS' responses regarding its multiple costing systems, we were not able to discern the differences between these systems until the cost verification. At verification we learned that the normal cost accounting system was fully integrated with USIMINAS' financial accounting system. USIMINAS' normal cost accounting system which was used to prepare the audited financial statements was a process cost accounting system based on standards. Even though USIMINAS' cost accounting system calculated product-specific costs which accounted for the differences in steel grade, width, thickness and process, USIMINAS did not rely on it to prepare the submitted COP and CV data. We do not find persuasive USIMINAS' claim that its normal cost accounting system did not contain the level of cost detail requested by the Department. The normal cost accounting system utilized a twenty-seven digit product coding scheme with the various product characteristics accounted for. The underlying cost detail remained despite the fact that USIMINAS averaged multiple products together for inventory valuation while preparing the financial statements. Thus, the normal cost accounting system was sufficient for Department cost reporting purposes. See, Memorandum from Laurens van Houten, et al. to Neal Halper—Verification of the Cost of Production and Constructed Value Data, April 9, 1999 (Cost Verification Report).

Despite the existence of a detailed cost accounting system, USIMINAS used its dumping matrix system, which was outside its normal cost and financial accounting system, to calculate the reported costs. The dumping matrix is not audited by the independent auditors, nor did the independent auditors opine as to whether the principles used by the matrix were in accordance with Brazilian generally accepted accounting principles (GAAP). The USIMINAS dumping matrix system reallocates costs to broad product groups and does not account for the physical characteristics defined by the Department. This is undisputed by USIMINAS. In an attempt to differentiate costs for each CONNUM's physical characteristics, USIMINAS applied a correction factor to the cost calculated by the dumping matrix. The correction factor was the ratio of the product specific cost from the normal cost accounting system to the average group cost from the normal cost accounting system.

There were numerous problems with the methodology employed by USIMINAS to develop the reported costs. First and foremost, USIMINAS failed to use its normal cost accounting system to prepare the reported costs. Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country *and* reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (*i.e.*, the cost data can be reasonably allocated to subject merchandise). In determining whether the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company. As demonstrated by the record evidence in this case (see, e.g., Cost Verification Report), the normal cost accounting system was based on records kept in accordance with GAAP of the exporting country and reasonably reflected the costs associated with the production and sale of the merchandise (*i.e.*, the costs were reasonably allocated to subject merchandise). Because USIMINAS' normal cost accounting system was maintained in accordance with Brazilian GAAP and reasonably reflected the costs associated with the production and sale of subject merchandise, USIMINAS should have reported the costs from its normal cost accounting system.

We allow companies to deviate from their normal cost accounting system when that system does not appropriately allocate costs to specific products. See, e.g., Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review 64 FR 76, 80 (January 4, 1999). This is not the case here. In the instant case, USIMINAS normal cost accounting system calculated costs at a much greater level of detail than the dumping matrix. Therefore, contrary to USIMINAS' claim, it was not necessary for it to resort to the dumping matrix to develop the reported costs.

Another shortcoming of USIMINAS' reporting methodology is that the product costs in the dumping matrix are based on a single average cost for slab. That is, USIMINAS used the average cost of all slab regardless of the grade or quality of the steel. Hence, in the dumping matrix there is no cost differentiation for grade or quality of steel. USIMINAS claims to have accounted for this difference in the reported costs by applying a correction factor to the dumping matrix costs. However, USIMINAS calculated the correction factor based on the ratio of a product-specific slab cost to the group-specific cost it relates to and applied the factor to the company-wide average slab cost (which is an average of numerous product groups). As a result, the ratio used to compute the slab cost adjustment has nothing to do with the average slab cost to which it is applied. Thus, this methodology does not appropriately allocate slab costs to the specific product.

In order to test the reported product-specific costs, we compared the reported costs for several products to the product-specific costs recorded in the normal cost accounting system. We found that the dumping matrix costs, even after they were adjusted by the ''correction factor,'' were consistently lower than the costs recorded in the normal cost accounting system used to prepare the audited financial statements. Additionally, during our testing we noted that the dumping matrix allocated process center costs to products on a basis different from that used in the normal cost accounting system to allocate these costs. Therefore, the allocation methods used for the reported costs were not those historically used by the company as required by section 773(f)(1)(A).

Before the Department can assess the reasonableness of a respondent's cost allocation methodology, it must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available. Because of the time constraints imposed on verifications, the Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products.

In performing this reconciliation, at verification USIMINAS provided a reconciling schedule which indicates an amount which was identified as that corresponding to the methodological difference between the normal cost accounting system and the reported costs. The amount of the overall reconciliation difference was consistent with the highest difference we found when we compared the reported product-specific costs to the product-specific costs in the normal cost accounting system. Therefore, to correct USIMINAS' mis-allocation of costs and its failure to use its normal cost accounting system as required by section 773(f)(1)(A), as facts available we increased the reported costs for all products by the largest reconciliation difference we found between the reported product-specific costs from the dumping matrix and the product specific costs in the normal cost accounting system.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this case USIMINAS failed to provide COP and CV data in the form and manner requested, *i.e.*, based on its normal cost accounting system as required by section 773(f)(1)(A). Since USIMINAS failed to provide the necessary information in the form and manner requested, and in some instances the submitted information was found to be inaccurate, we conclude that, pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed above and in the verification report, USIMINAS failed to use its normal cost accounting system to report the submitted COP and CV data and, as a result, failed to reconcile the reported costs to its normal cost accounting system. In this case, however, an adverse inference is not warranted. The Department has applied the reconciliation difference to correct the submitted cost data. As explained above, the Department determined at verification that this reconciliation difference accurately represents the actual variation between product-specific costs generated by the dumping matrix and product-specific costs generated by the normal cost accounting system.

We also disagree with USIMINAS' claim that the Department should have relied on its dumping matrix because it had done so in a previous review. As articulated in Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927, 12945–48 (March 16, 1999), the Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior review, as suggested by USIMINAS.

We disagree with USIMINAS' claim that it had to use the dumping matrix because it was the only system that correctly allocated variances and depreciation. In its normal cost accounting system, USIMINAS did not allocate these costs to specific products. However, USIMINAS allocated them to the cost of goods sold and the cost of inventory based on the standard costs. In its normal accounting system, USIMINAS recognizes that standard cost is the appropriate allocation base for variances and depreciation. As this allocation methodology factors in the cost drivers of the variances and depreciation (*e.g.* machine time, labor hours, direct and indirect material cost and usage, energy cost and usage, other variable costs, maintenance, and other services) it would have been a reasonable method to report costs for Department purposes. Therefore, we disagree that the dumping matrix was the only system that correctly accounted for these costs.

Comment 48: USIMINAS' Different COP and CV values. Petitioners argue that the Department should employ as facts available the higher of the COP or CV when the COP and CV differ for an identical CONNUM. Petitioners argue that USIMINAS did not calculate a weight-averaged cost based on global sales quantities for each product as instructed by the Department. Petitioners argue that it is impossible to fix this error with either of the remedies suggested by USIMINAS. Petitioners argue that without the sales quantity for each 27-digit product in a CONNUM, the Department cannot correct the error.

USIMINAS maintains that the existence of different CONNUM-specific costs in the COP and CV files is not a problem. USIMINAS argues that the submitted global cost file provides the cost for each CONNUM, segregated by product groups, which the Department may use to calculate a unique cost for each CONNUM. In addition, USIMINAS states that, in the event the Department elects to collapse USIMINAS and COSIPA, the Department will ultimately rely on the consolidated cost file provided for USIMINAS and COSIPA. USIMINAS claims that in this file USIMINAS and COSIPA have provided unique costs for each CONNUM and, as a result, the Department's observation about a distinct CONNUM cost in the USIMINAS-specific COP and CV file should have no impact on the Department's calculations in this investigation.

Department's Position: We agree with petitioners. USIMINAS calculated a COM for COP purposes which was different from the COM it calculated for CV purposes for identical CONNUMS. Because the COM for a given CONNUM is the weighted average cost of producing that CONNUM, at least one of the reported COMs for each such ''two-value'' CONNUMS is incorrect. Although USIMINAS has provided a ''global'' file that consolidates COM (for both COP and CV) for both USIMINAS and COSIPA on a per-CONNUM basis, this global figure is not sufficient for the Department's needs. Specifically, the Department needs an accurate USIMINAS-specific COM for each CONNUM in order to make USIMINAS-specific adjustments to that COM before it is averaged with the COSIPA-specific COM data, to which COSIPA-specific adjustments have been made.

The apparent reason why there are different USIMINAS COMs for COP and CV is that the former represents the COM of units sold in the home market, whereas the latter represents the COM of units sold to the United States. Instead, the Department's practice is to calculate COM values (for both COP and CV) for each CONNUM (which in this case is a group of multiple discrete products, each represented by a 27-digit product code) based on production of that CONNUM for sale to the worldwide market. The Department repeatedly requested that USIMINAS provide a single, weighted average COM for each USIMINAS CONNUM, but USIMINAS failed to provide this. Furthermore, the Department is unable to calculate such a COM from the data supplied by USIMINAS because it does not have the sales quantity data for each 27-digit product code needed to calculate the CONNUM-specific average across production for world-wide sale. Because USIMINAS has not provided the USIMINAS-specific weighted average COM for each CONNUM, the Department must use the facts otherwise available for this information. Therefore, when the COM reported for COP purposes and the COM reported for CV purposes differed for any USIMINAS CONNUM, we have used the higher of the two figures as the COM value for that CONNUM.

Comment 49: USIMINAS' Major Inputs from CVRD. Petitioners argue that iron ore is a major input and that since USIMINAS failed to provide the COP information for iron ore purchased from its affiliate Companhia do Vale Rio Doce (''CVRD''), the Department should use facts available to value this input.

USIMINAS argues that Department should accept the iron ore transfer price from CVRD, as the Department has done in a prior administrative review because the iron ore prices charged by CVRD were above the price charged by unaffiliated companies. USIMINAS argues that the circumstances in this case are identical to that in a prior review in which the Department made no adjustment. In addition, USIMINAS maintains that the Department has confirmed that the iron ore prices charged by CVRD are above the prices charged by unaffiliated suppliers. USIMINAS argues that it could not compel CVRD to provide its COP of iron ore.

USIMINAS states that the Department overestimated the percentage of CVRD's iron ore in the total cost of manufacturing in its verification report. USIMINAS argues that the Department's calculation incorrectly assumes that the entire cost of sinter is equivalent to iron ore, whereas sinter is a value-added product in which iron ore is one input. USIMINAS argues that cost verification exhibit C–15 shows that the monthly consumption of iron ore is less than half of the amount assumed by the Department. USIMINAS states that when the correct monthly cost of iron ore is used in the Department's methodology, the cost of iron ore is a much lower percentage of the total cost of manufacturing.

Department's position: We have applied the major input rule in accordance with section 773(f)(3) of the Act in valuing the iron ore received from CVRD. In doing so, we have used, as facts available, the COP information provided in the September 30, 1998 petition as the COP of iron ore from CVRD since USIMINAS did not provide the COP information as requested by the Department.

We consider iron ore to be a major input in accordance with section 773(f)(3) of the Act. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.*, major or minor inputs) are at prices that ''fairly reflect the market under consideration.'' Section 773(f)(3) allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is not less than the affiliated supplier's COP where there is reasonable cause to believe or suspect the price is below COP. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is not below cost. We consider the initiation of a sales-below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act (see e.g., Final Results of Antidumping Administrative Review: Silicomanganese from Brazil, 62 FR 37871 (July 15, 1997)).

In determining whether an input is considered major, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus unaffiliated suppliers) and the percentage the individual element represents of the product's COM. Even though we agree with USIMINAS that the Department overestimated the percentage of CVRD's iron ore in USIMINAS's total COM in the USIMINAS cost verification report, we still determined in this case that iron ore represents a significant percentage of the total cost of manufacturing and that USIMINAS receives a significant portion of its iron ore from its affiliate CVRD. The combination of the significant amounts of the inputs obtained from CVRD and the relatively large percentage the iron ore represents of the product's COM increases the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act applies to this input.

Because we have determined that iron ore purchased from an affiliate is a major input in USIMINAS' production of carbon steel, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with sections 773(f)(2) and (3) of the Act, we attempted to compare the transfer price for iron ore purchased from USIMINAS' affiliated supplier to the supplier's COP and a market price. Even though the Department requested that USIMINAS provide its affiliated supplier's actual COP for iron ore in the original section D questionnaire, the supplemental questionnaires and at verification, USIMINAS failed to do so.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that, if the administering authority "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," then in determining the applicable facts available it "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."

In the instant case, the use of facts available is warranted because USIMINAS failed to provide the COP of iron ore received from its affiliated supplier. Because USIMINAS failed to respond to repeated requests for this information, as adverse facts available, we have relied on the COP provided in the September 30, 1998 petition. For the final determination, we adjusted the transfer price of the iron ore inputs received from CVRD to reflect the higher COP in the petition.

Comment 50: USIMINAS' Major Inputs from USIMPEX. Petitioners note that USIMINAS purchases the majority of its coal from an affiliate, USIMINAS Importacao e Exportacao S.A. ("USIMPEX"). Petitioners argue that USIMPEX's COP for coal was higher than the market value and the transfer price used to establish the COP and CV. Petitioners contend that since coal is a major input, the Department should apply the major input rule and use the higher of market value, transfer price or COP.

USIMINAS argues that the Department incorrectly calculated the amount of USIMPEX's 1997 loss and USIMPEX actually had a gross profit. USIMINAS argues that the amount the Department stated was USIMPEX's negative gross profit was the company's net operating expenses. USIMINAS argues that because USIMPEX had a gross profit in 1997 its sales prices were above its costs. USIMINAS further argues that if the Department were to subtract USIMPEX's SG&A expenses, there is still no indication that USIMPEX is selling below its costs because the resulting loss is insignificant and would show that it was essentially operating at the break-even point.

Department's position: As it relates to the facts of this case, we consider coal to be a major input in the production of carbon steel in accordance with section 773(f)(3) of the Act (see response to Comment 49).

Because we have determined that coal purchased from an affiliate is a major input in USIMINAS' production of carbon steel in this case, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with section 773(f)(2) and (3) of the Act, we compared the transfer price to the affiliated supplier's COP and the market price (*i.e.*, prices from un-affiliated suppliers) and found that the market price was greater than both the transfer price and the COP. Thus, for the final determination we have adjusted the reported cost for coal purchases from USIMINAS' affiliated supplier to reflect the higher market price.

Comment 51: USIMINAS' Interest Revenue Offset. Petitioners argue that the Department should deny USIMINAS' claimed interest income offset in its entirety because USIMINAS was unable to segregate the long- and short-term components of the consolidated interest revenue. Petitioners argue that the segregation of long- and short-term interest revenue for the producing entity alone is inappropriate because the producer's interest income may include amounts derived from affiliated party transactions which would be eliminated in the preparation of consolidated financial statements.

USIMINAS argues that if the Department does not accept USIMINAS' submitted short-term financial income values identified in the response, the Department should use the ratio between USIMINAS' short-term and long-term financial income as a surrogate to derive short-term income from the total consolidated financial income for USIMINAS companies. USIMINAS notes that the Department examined USIMINAS' interest income for the purposes of distinguishing short-term and long-term portions. USIMINAS argues that the Department must allow interest on accounts receivable and accounts receivable discounts as an offset to interest expense because these two items are short-term in nature. In addition, USIMINAS argues that given the sizable increase in total financial income from the USIMINAS parent company to the USIMINAS consolidated entity, the Petitioners' theory, that the short-term financial income may include revenue derived from affiliated party transactions, has no merit.

Department's position: We agree with USIMINAS that it is reasonable to use the USIMINAS company-specific short-term to long-term financial income ratio as a surrogate to derive the short-term portion of total interest income from the USIMINAS consolidated financial statements. While USIMINAS was unable to document the short-term portion of interest income for the consolidated entity, we found that the USIMINAS company-specific interest income represented the majority of the consolidated entity's interest income. Therefore, we have found it reasonable to use the USIMINAS company-specific short-term to long-term financial income ratio as a surrogate to derive the short-term interest income from the total USIMINAS consolidated financial income.

We disagree with USIMINAS that interest income earned on accounts receivable and accounts receivable discounts should be included as an offset to interest expense. Interest charged to customers relating to specific sales are more appropriately treated as sales revenue. In fact, there is a separate field identified in the section B and C questionnaires in which this revenue is to be reported (*i.e.*, INTREVH for home market sales and INTREVU for U.S. sales). Accordingly, we have disallowed this interest income on accounts receivable and accounts receivable discounts as an offset to interest expense.

Comment 52: USIMINAS' SG&A. USIMINAS argues that the Department incorrectly excluded the income from certain USIMINAS operations, while including the associated expenses (for example USIMINAS ownership of the Ipatinga airport) in the preliminary determination. USIMINAS argues that if Department excludes the income from any non-operational activity, it should also exclude the expense associated with that activity.

Petitioners argue that USIMINAS has not demonstrated that the revenue in question is related to operations for which SG&A expenses were reported. Petitioners further argue that it would be improper to use revenue as an offset if no related expenses were included in the SG&A, thus, USIMINAS does not qualify for an offset to its SG&A expenses.

Department's position: We agree with USIMINAS. In the preliminary determination we excluded the income from certain USIMINAS operations, while including the associated expenses (for example USIMINAS ownership of the Ipatinga airport). At verification, we reviewed source documents and obtained explanations from company officials on all the income items that were used to offset USIMINAS' SG&A costs. We found that certain revenue items (*e.g.*, airport leases and rent) were related to investments, and not to the general operations of the company as a whole. In addition, we found that certain expense items related to the activities which produced this income were included in the SG&A calculation. For the final determination we have excluded the expenses which directly relate to the excluded revenues.

Comment 53: COSIPA's Errors in Reporting Sales Quantities. Petitioners argue that errors in COSIPA's calculation of sales quantity result in an understatement of the total cost of manufacturing which requires the use of facts available. Petitioners assert that to correct this error the Department should increase the total cost of manufacturing for each product by the same percentage since the product-specific impact of these errors is not known.

COSIPA retorts that the errors in sales quantity as originally submitted do not result in an understatement of the total cost of manufacturing but an overstatement of costs. COSIPA argues that petitioners' justification for using facts available is flawed since the product-specific corrections were submitted at the Department's request.

Department's Position: We agree with COSIPA. The sales quantities as originally reported overstated the total cost of manufacturing. The Department obtained at the first day of verification an exhibit explaining the error in sales quantities and in the provisions account. We verified the accuracy and impact of the product-specific corrections and obtained revised databases. As a result, no additional adjustment as a result of this correction is necessary.

Comment 54: COSIPA's Iron Ore Purchases from Affiliates. Petitioners argue that COSIPA failed to provide CVRD's COP for the major input iron ore, despite repeated requests from the Department throughout the course of this investigation. Petitioners advocate the use of facts available to value iron ore.

COSIPA argues that the Department should accept the iron ore costs based on the transfer price because COSIPA acted to the best of its ability to obtain cost information from CVRD but were unable to do so because of the nature of affiliation with CVRD. COSIPA also states that the affiliated prices from CVRD are higher than iron ore prices from unaffiliated suppliers. COSIPA claims that this would be consistent with the Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil 63 FR 12744, 12751 (March 16, 1998) where the Department decided to accept COSIPA's submitted iron ore costs from CVRD.

Department's Position: In determining whether an input is considered major in accordance with section 773(f)(3) of the Act, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's total cost of manufacturing. COSIPA purchased iron ore from an affiliate, CVRD. We have determined that the quantity and value of iron ore purchased during the POI from CVRD are not of enough significance to be considered a major input in accordance with section 773(f)(3). However, pursuant to section 773(f)(2) of the Act, the Department may disregard the transfer price from an affiliated supplier if it is less than the market price for the same input. We compared the transfer price of iron ore purchased from CVRD to the market price (*i.e.*, prices for purchases from unaffiliated suppliers) and found that the market price was higher. Therefore, for the final determination, we adjusted the submitted iron ore costs to reflect a market price.

Comment 55: COSIPA's Coal Purchases from Affiliates. Petitioners assert that the cost of coal obtained by COSIPA from affiliated parties is undervalued, requiring the use of facts available. Petitioner states that coal is a major input and since the affiliate's cost, excluding freight, is higher than the price charged to COSIPA, the Department should increase the reported value for coal by the percentage difference between the cost and the transfer price.

In comparing transfer price to cost, respondents state that the petitioners' analysis is flawed due to double-counting of COSIPA expenses. Respondents argue that it is incorrect to include any of COSIPA Overseas' financial expenses as a cost because these expenses are already captured in the consolidated financial expenses for COSIPA using the COSIPA/USIMINAS consolidated financial statement. Second, respondents state the inclusion of SG&A expenses of COSIPA Overseas is also incorrect, as the SG&A used by the Department in the preliminary determination was apparently the consolidated SG&A for both COSIPA and COSIPA Overseas.

Department's Position: COSIPA purchased coal from an affiliate, COSIPA Overseas. We have determined that the quantity and value of coal purchased during the POI from the affiliate were significant. Pursuant to sections 773(f)(2) and (3) of the Act, the Department may value major inputs purchased from affiliated suppliers at the higher of market value, transfer price or the affiliated supplier's COP. See Comment 49.

In accordance with sections 773 (f)(2) and (3) of the Act we attempted to compare the transfer price of the coal purchased from the affiliated supplier to the market price for coal and to the affiliate's COP. Since COSIPA did not purchase coal from any other supplier nor did the affiliate sell coal to another customer during the period of investigation, we were unable to establish a market price for coal. We agree with the respondent's assertion that the Department's cost verification report double counted financial expenses in calculating the affiliate's COP. The double counting occurred as a result of consolidating the affiliate's expenses into COSIPA's financial statements. After adjusting for this duplication, the transfer price from the affiliate is higher than the affiliate's calculated COP. Since our testing indicated that the transfer price between COSIPA and its affiliate was higher than COP, no adjustment was necessary. We disagree with respondent's contention that we used the consolidated SG&A for the preliminary determination. In fact we used the unconsolidated COSIPA SG&A expenses.

Comment 56: COSIPA's SG&A Expenses. Petitioners state that COSIPA's SG&A rate was understated and must be revised to reflect all related expenses. Petitioners point out that COSIPA failed to include expenses related to the depreciation and amortization on administrative assets in its SG&A rate calculation. Petitioners also point out that accruals for lawsuit contingencies were omitted. Petitioners argue these amounts should be included in the SG&A rate calculation.

The respondent did not comment on this issue.

Department's Position: We agree with petitioners that the costs associated with depreciation and amortization on administrative assets and accruals for lawsuit contingencies should be included in COSIPA's SG&A expense rate calculation. We consider these costs to be related to the general operations of the company as a whole. We have therefore revised COSIPA's SG&A calculation to include these costs. Since we did not include ICMS taxes in the COP and CV computations, we did not allow income recognized from rescheduling of ICMS taxes as an offset to SG&A expense.

Comment 57: Dufer's Further Processing Costs. Petitioners argue that the Department should use facts available to determine the cost of further processing at Dufer because Dufer has no product-specific cost records.

Respondents argue that Dufer has no basis for determining product-specific costs as required by the Department. Respondents state that Dufer is a small company and cooperated to the best of its ability by providing all of the information it could to the Department. Respondent's cite Annex II of the 1994 Agreement on Implementation of Article VI of the GATT in arguing that the Department should use information provided to it by respondents, ''provided the interested party has acted to the best of its ability.'' In the instant case, respondents argue that Dufer provided all of the information it had to the best of its ability and fully cooperated with the Department at verification, and thus there is no basis for the Department to use facts available to determine Dufer's costs.

Department's Position: These comments on Dufer's cost issues are moot due to the Department's decision to use adverse facts available for sales from Dufer. See Comment 18.

Suspension of Liquidation

On July 6, 1999, the Department signed a suspension agreement with CSN, USIMINAS, and COSIPA suspending this investigation. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of hot-rolled flat-rolled, carbon-quality steel products from Brazil. Any cash deposits of entries of hot-rolled flat-rolled, carbon-quality steel products from Brazil shall be refunded and any bonds shall be released.

On July 2, 1999, the Department received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin (percent)
CSN	41.27
USIMINAS/COSIPA	43.40
All Others	42.12

ITC Notification

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil. The basis for this action is an agreement between the Department and producers/exporters accounting for substantially all imports of hot-rolled steel from Brazil wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 (the Act), as amended, to determine whether imports of hot-rolled steel from Brazil are being or are likely to be sold in the United States at less than fair value (63 FR 56607, October 22, 1998). On November 16,