

[A-427-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Amendment to Final Results of Antidumping Duty Administrative Reviews and Rescision of Partial Revocation of Antidumping Duty Order

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

ACTION: Notice of amendment to final results of antidumping duty administrative reviews and rescision of partial revocation of Antidumping Duty Order.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 10959) the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The review period was May 1, 1992, through April 30, 1993. Based on corrections to the calculation of United States price (USP), we are amending the final results with respect to French BBs and SPBs sold by one company, SKF France (SKF).

We are also rescinding the revocation of the antidumping duty order on SPBs from France with respect to SKF, since the dumping margin is no longer *de minimis*.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202)482-4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published in the **Federal Register** the final results of its administrative reviews of the antidumping duty orders on AFBs from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. The review

period was May 1, 1992, through April 30, 1993.

In these final results, we revoked in part the antidumping duty order on SPBs from France with respect to SKF based on three consecutive years of zero or de minimis weighted- average dumping margins in accordance with 19 CFR 353.25(a).

Subsequent to the issuance of our final results, the Torrington Company (Torrington), the petitioner, alleged a clerical error in the calculation of dumping margins for SKF with respect to BBs and SPBs from France. We determined there was a ministerial error in the calculation of USP in the final results for AFBs from France sold by SKF. Specifically, purchase price sales made by SKF were reported in French francs, and we failed to convert these prices to U.S. dollars. We have therefore corrected our calculation of SKF's USP.

Rescision of Revocation

After correction of this ministerial error, we found that the weighted-average margin for SPBs from France sold by SKF no longer is *de minimis*. Therefore, the criteria for partial revocation pursuant to 19 CFR 353.25(a) have not been met, and we hereby rescind the partial revocation of the antidumping duty order on SPBs from France with respect to SKF.

Amended Final Results of Reviews

As a result of our corrections, we have determined the following percentage weighted-average margins to exist for the period May 1, 1992 through April 30, 1993:

Company	BBs	SPBs
SKF	3.74	49.08

Based on these results, we will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with

this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: March 23, 1995.

Susan G. Esserman,
Assistant Secretary for Import Administration.

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[A-588-834]

Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan

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

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: James Maeder or Bill Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-3330 or 482-0116, respectively.

Final Determination

We determine that stainless steel angle (SSA) from Japan is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on November 4, 1994 (59 FR 56053, November 10, 1994), the following events have occurred.

On November 23, 1994, the petitioners alleged that the preliminary margin calculations contained three distinct ministerial errors. As detailed in the December 8, 1994, memorandum to Barbara R. Stafford, the Department agreed that the errors identified by the petitioners were ministerial in nature, but did not amend the preliminary determination because these errors were not significant, as defined in the Proposed Regulations (19 CFR 353.15(g)(4)(ii)).

In December 1994, the Department conducted its sales and cost

verifications of the respondent, Aichi Steel Works Ltd. ("Aichi") in Japan.

On February 17, 1995, the petitioners and Aichi submitted case briefs. Rebuttal briefs were submitted by both parties on February 24, 1995.

Scope of Investigation

For purposes of this investigation, the term "stainless steel angle" includes hot-rolled, whether or not annealed or descaled, stainless steel products of equal leg length angled at 90 degrees, that are not otherwise advanced.

The stainless steel angle subject to this investigation is currently classifiable under subheadings 7222.40.30.20 and 7222.40.30.60 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

As noted in the March 21, 1995 memorandum from the Acting Director of the Office of Antidumping Investigations to the Deputy Assistant Secretary for Investigations, the Department has clarified the scope of the investigation as published in the preliminary determination, to specifically exclude stainless steel products of unequal leg length.

Period of Investigation

The period of investigation (POI) is November 1, 1993, through April 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. References to the Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (Jan. 10, 1992), concerning corrections of ministerial errors, ("Proposed Regulations"), are provided solely for further explanation of the Department's antidumping practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding, which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (Jan. 3, 1995).

Such or Similar Comparisons

For purposes of the final determination, we have determined that SSA constitutes a single "such or similar" category of merchandise.

The respondent reported that there were no sales of identical merchandise in the home market during the POI. Because there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Stainless steel grade; (2) leg-length; (3) thickness; (4) spine length; and (5) other characteristics, as listed in Appendix V of the Department's questionnaire, and in accordance with section 772(16) of the Act.

Fair Value Comparisons

To determine whether sales of SSA from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the home market, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57. Further, in accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to an unrelated purchaser before importation into the United States and because exporter's sales price methodology was not otherwise indicated. For the reasons detailed in the *Comment* section of this notice, we reclassified the level of trade of U.S. sales to categorize them as having been made to a trading company.

With regard to the calculation of movement expenses, we made deductions from the U.S. sales price, where appropriate, for foreign brokerage, foreign inland freight, and insurance.

We recalculated U.S. credit expenses based on Aichi's lending rate to its customers as opposed to Aichi's investment return rate. In accordance with section 772(d)(1)(B) of the Act, we added to USP the amount of import duties which were not collected on inputs due to exportation of SSA to the United States.

In accordance with our standard practice, pursuant to the decision of the U.S. Court of International Trade (CIT) in *Federal-Mogul Corporation and The*

Torrington Company v. United States, 834 F. Supp. 1391 (CIT 1993), our calculations include an adjustment to U.S. price for the consumption tax levied on comparison sales in Japan. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from France (60 FR 10538, 10539, February 27, 1995) and Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan (59 FR 16177, 16179, April 6, 1994), for an explanation of this methodology.

Foreign Market Value

As stated in the preliminary determination, we found that the home market was viable for sales of SSA, in accordance with 19 CFR 353.48(a).

Because Aichi maintained that its sales to related parties in the home market were made at arm's length, we examined those sales under the Department's arm's-length test. Where possible, in applying this test, we compared related and unrelated party sales at the same level of trade. We considered a party as related to the respondent whenever the respondent had a substantial ownership interest in the party. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's arm's-length test. In order to determine whether a sale is made at arm's length, we must compare the related-party price for a given product model to the average price for the same product model as sold to unrelated customers. Therefore, certain related-party sales were excluded from our analysis because those specific product models could not be compared to unrelated sales and because they were made in insignificant quantities.

In the home market, Aichi sells SSAs through several distribution channels. Where Aichi sold SSAs through its subsidiary, that subsidiary's sales to unrelated parties formed the basis of our FMV calculation. We only included sales to the related parties that were made at arm's length.

We calculated FMV based on delivered prices. Deductions were made for discounts and rebates, where applicable.

In light of the decision of the U.S. Court of Appeals for the Federal Circuit's (CAFC) in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home

market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust, where appropriate, for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a). Accordingly, in the present case, we deducted post-sale home market inland freight and insurance from FMV under the circumstance-of-sale provision of 19 CFR 353.56(a).

Examination of the facts surrounding one expense claimed as a rebate by Aichi led us to determine that this reported adjustment was, in fact, a transfer of funds from the parent to its subsidiary. As stated in Final Results of Antidumping Duty Administrative Review: Color Television Receivers from Korea (53 FR 24975, July 1, 1988), "Transactions between related parties are intracorporate transfers of funds for which no adjustment should be allowed." In Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland (56 FR 56372, November 4, 1991), we made an exception for rebates paid to a related party where sales to that party were found to be at arm's length. However, in this instance, the rebates in question are to a related reseller, and the sales reported to the Department are the downstream resales of that related party to the first unrelated purchaser. This rebate was not passed on to the unrelated purchaser. Consequently, we did not make any adjustments to FMV for this claimed rebate.

FMV was reduced by home market packing costs and U.S. packing costs were added, in accordance with section 773(a)(1) of the Act. The Department also made circumstance-of-sale adjustments for home market direct selling expenses, which included imputed credit expenses, and commissions, in accordance with 19 CFR 353.56(a)(2). Pre-sale warehousing expenses and pre-sale foreign freight charges were classified as home market indirect selling expenses, pursuant to the Departments practice and as upheld by *The Torrington Co. v. the United States*, No. 91-08-00567, Slip Op. 94-168 (CIT 1994). We deducted commissions incurred on home market sales and added total U.S. indirect selling expenses, capped by the amount of home market commissions; those total U.S. indirect selling expenses included U.S. inventory carrying costs, and indirect selling expenses incurred in Japan on U.S. sales.

We adjusted for the consumption tax in accordance with our practice (see "United States Price" section of this notice).

Cost of Production (COP)

As we indicated in our preliminary determination, on September 7, 1994, the Department initiated an investigation of sales in the home market made below the cost of production (COP). In order to determine whether home market sales prices were below COP within the meaning of section 773(b) of the Act, we calculated COP based on the sum of the respondent's cost of materials, fabrication, general, and packing expenses, in accordance with 19 CFR 353.51(c). As discussed in the Department's cost verification report, Aichi had misreported the material costs of two SSA models. We corrected the reported material costs used in COP and constructed value (CV) for those two models by using the average material cost of all other models of the same grade as a reasonable surrogate, since verification revealed that the misreporting resulted from a technical flaw inherent in the computerized cost allocations used by Aichi in the normal course of business. We then compared the COP to the home market selling prices, net of movement charges and discounts and rebates.

In accordance with Section 773(b) of the Act, we followed our standard methodology to determine whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. Where we found that over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that respondent's below-cost sales are not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given product were at prices above the COP, we disregarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of a respondent's sales of a given product were at prices below the COP and were sold over an extended period of time, we disregarded all sales for that model and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine

whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom (60 FR 10558, 10560, February 27, 1995). Based on this, for U.S. sales of certain products, there were adequate home market sales made above the cost of production to serve as FMV. For U.S. sales of other products, there were not. In such cases, we matched U.S. sales to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials, fabrication, general expenses, profit, and U.S. packing cost. In accordance with section 773(e)(1)(B) of the Act, for general expenses, which include selling and financial expenses (SG&A), we used the reported general expenses because these were greater than the statutory minimum of ten percent of the cost of production. For profit, we used the statutory minimum of eight percent of the cost of manufacturing and general expenses, because Aichi's reported profit was less than eight percent of the total of cost of manufacturing and general expenses.

Currency Conversion

We have made currency conversions based on the official exchange rates, as certified by the Federal Reserve Bank of New York, in effect on the dates of the U.S. sales, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Comment 1—Level of Trade

The petitioners maintain that the reported U.S. sales were not made to a

distributor, as the respondent claims, but to a trading company. They contend that since the sales are made to Kanematsu¹ for delivery to its wholly-owned subsidiary, KGS, and since Kanematsu is a trading company, U.S. sales should be classified as trading company sales. According to the petitioners, Aichi's descriptions in its June 29, 1994, submissions at exhibits 31 and 32 identify Kanematsu at a different level of trade than reported. The petitioners maintain that the record shows that Kanematsu did not inventory SSA, since the subject merchandise was shipped directly by Aichi to KGS. Thus, they argue, Aichi's own definition categorizes Kanematsu as a trading company.

Aichi claims that it has reported levels of trade based on the different economic functions performed by its customers. According to the respondent, while Kanematsu is nominally a trading company, it actually functions as a distributor in Japan for sales of SSA, since it does take the SSA into inventory. Correspondingly, the respondent reported sales to Kanematsu in the home market as "distributor" sales. Aichi maintains that it detailed in its June 29, 1994, submission and in the documentation of sales at verification, how Aichi's sales to the United States begin with price negotiations held with KGS, not Kanematsu. Aichi stresses that it deals directly with KGS, which functions as a mill depot for Aichi's angles and, therefore, holds inventory. Aichi reiterates that the prices are set between Aichi and KGS on CIF terms considering KGS's function as a mill depot, and that the price to Kanematsu is merely calculated from this CIF price. Respondent's argument centers on the price negotiations between Aichi and KGS, and Kanematsu's role in facilitating the documentation for Aichi's sales to KGS; accordingly, Aichi maintains that its sales are, in effect, to a distributor.

DOC Position

We disagree with the respondent. In accordance with 19 CFR 353.58, we have changed the designation of U.S. sales level of trade to that of a trading company. It is Kanematsu which establishes the basic business relationship with Aichi and which pays for the merchandise. Because Kanematsu is the controlling entity with final approval of the subject sales to the United States, we have determined that the appropriate designation of the level

of trade of U.S. sales is that of a trading company transaction. Thus, we are matching trading company sales in Japan to trading company sales in the United States first; if no trading company sales exist in Japan for the product model, then we used distributor sales in Japan instead.

Comment 2—Aichi's Price Protection Program as Control

The petitioners maintain that in the event the Department does not classify Aichi's home market sales price protection program as a commission program, the Department should reconsider its determination not to treat Aichi and the participating members of the price protection program as related parties. They restate their argument, previously made before the preliminary determination, that the record demonstrates that the manufacturer, Aichi, exercises significant control over the selling practices of the reseller companies participating in the price protection program. Contending that, while these parties are not related via stock or equity ownership, the business dealings between them do not represent arm's-length transactions, the petitioners argue that the Department should treat these parties as related.

Aichi counters that the Department thoroughly reviewed its records at verification to examine the members' activities, none of which would give Aichi either *de jure* or *de facto* control over these member companies. Rejecting the petitioners' contention that the possibility of control is the operative standard for relatedness, Aichi states that the petitioners have failed to provide any measurable criteria for applying such a standard. Aichi maintains that, in the absence of evidence that Aichi exerts control over these members and in the absence of an ownership interest greater than 5 percent, the petitioners' argument that Aichi is related to these customers should be rejected.

DOC Position

We disagree with the petitioners and determine that members of the program are not related. We believe that the evidence on the record does not indicate that Aichi maintains control over members of the price protection program. The information provided does not indicate that Aichi can set the prices of the members; price is set by market conditions. The price protection agreement is not a contractual agreement constituting business control over the members. No evidence exists in the record of this investigation which indicates that Aichi exercises, or can

exercise, control over participants in the price protection program.

Comment 3—The Nature of Price Protection Adjustments

The petitioners maintain that the Department should treat the amounts which Aichi claimed as discounts as home market commissions under the commission offset provision. They argue that a review of the administration of the price protection program demonstrates that the adjustments granted represent omissions rather than discounts, arguing that the calculation of the adjustments is based, not on the purchases made by these firms, but rather on their resales. The petitioners further maintain that discounts are price reductions which are based solely on the transaction between the manufacturer and the immediate purchaser. The analysis conducted by petitioners instead characterizes the reported adjustments as the equivalent of payments for services rendered by a commissioned agent. The petitioners cite to the Final Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan (55 FR 34585, 34598 (August 23, 1990)), which they maintain shows that the Department has classified selling expenses as commissions when it found that the manufacturers' trading company performed the functions of a commission agent.

As an alternative approach, the petitioners argue that even if the Department decides not to treat all of the price protection adjustments as commissions, it should, at a minimum, offset indirect U.S. selling expenses against those price protection adjustments expressly identified as commissions.

Aichi states that the petitioners ignore a basic distinction between discounts which are a prepayment price reduction, and commissions which are a form of payment for services. Aichi maintains that its accounting system treats discounts differently from commissions and likewise the Department's methodology should treat the adjustments differently. Citing numerous investigations and court cases, including *Sonco Steel Tube Division v. United States*, 714 F. Supp. 1218, 1222 (CIT 1989), Aichi seeks to demonstrate that the Department's practice of treating early payment discounts as price adjustments instead of circumstance-of-sale adjustments is longstanding and supported by the Courts. Aichi believes that the prepayment price protection adjustments are similar to early-payment discount

¹ Aichi has not claimed proprietary treatment for the identity of its U.S. customer, nor for that customer's U.S. subsidiary.

programs and, accordingly, should be given the same treatment in the Department's margin calculations.

Aichi maintains that since the price protection program deals with reductions in prices to its customers, not in selling expenses actually incurred, the program cannot be considered to generate commissions. Aichi notes that in its accounting system, the price protection discounts are netted from accounts receivable as a reduction from sales revenue and are, therefore, reflected in its net sales. Aichi contrasts its treatment of commissions (paid only on non-subject merchandise) which are expensed in Aichi's SG&A accounts with its treatment of the price protection adjustments as a component netted from accounts receivable.

Central to Aichi's presentation is its contention that the Department in every prior determination has determined price protection adjustments to be discounts; for this reason it refers to its listing of those determinations in exhibit 4 of its September 19, 1994, submission. According to Aichi, the discount nominally identified as the "commission" adjustment was administered and calculated according to an agreed-upon formula just as are all other components of the price protection program.

Aichi maintains that the petitioners' citation to Sweaters from Taiwan is ill-chosen because, in that investigation, the Department treated payments to a trading company as commissions for a combination of reasons not present here: because the trading company never took possession of the merchandise, because the trading company never paid the manufacturer directly for the merchandise, and because the respondent treated the payment amounts as commission expenses in its accounting records.

DOC Position

We agree, in part, with both parties. Under the program, Aichi receives aggregate monthly resale reports from the price protection member companies; Aichi does not set prices for the member companies. Member companies do not report individual sales prices back to Aichi, only aggregate resale values. The price protection program does not require member companies to report expenses to Aichi; the program's various adjustments take into account that the member firms will incur certain selling expenses in making those resales.

As described by Aichi and verified by the Department, the general purpose and actual administration of the price protection program consists of Aichi granting price reductions to its customer

to ensure a set return on the resales of the merchandise. Unlike the company examined in the investigation of *Sweaters from Taiwan*, Aichi did not report the expenses incurred by an intermediary party in making resales. Instead, Aichi is, for the most part, granting discounts in order to ensure that the prices received by resellers are adequate. Because these price adjustments are based on claims settled according to terms agreed upon at sale and before payment, we are treating the claimed adjustments for four of the five elements of the price protection program as discounts, similar in execution to early payment discounts, for purposes of the final determination. See *Sonco Steel Tube Division v. United States*, 714 F. Supplement 1218, 1222 (CIT 1989); Granular Polytetrafluorethylene Resin from Japan; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 5622 (January 30, 1995); *et al.*

Four adjustments (the exception being the adjustment calculated in recognition of member companies' role as resellers) are not like commissions, which are normally set at given rates prior to sale and which are not dependent on ultimate resale prices. One component of Aichi's program, however, which was specifically designed in recognition of the selling function of the member companies, is the functional equivalent of a sales commission. As stated by Aichi in its July 28, 1994, submission at 18, "Aichi guarantees * * * a set return on their SSA sales by granting a commission for their resales of Aichi SSAs and price adjustments that 'account' for 'selling expenses' presumably incurred * * * in making resales." The reduction in price termed a commission adjustment is, in fact, similar to a commission payment. The amount is set and administered like a commission. This adjustment is designed, by Aichi's own account, to take into consideration the expenses which the price protection member companies must incur to find and maintain their customers. The importance of this function is underlined by Aichi's reliance on the external sales and marketing abilities of its price-protected customers. We are, therefore, treating this reported adjustment as a commission, deducting it from FMV and adding to FMV indirect selling expenses incurred by Aichi on U.S. sales, capped by the amount of the home market commission.

Comment 4—Duty Drawback

The petitioners maintain that the record in the investigation demonstrates

that Aichi is not entitled to an upward adjustment to U.S. price by virtue of duty drawback. They contend that Aichi does not have a valid claim to a duty drawback adjustment because the cost verification demonstrated that import duties were not included in the prices for any of the angle that Aichi sold in Japan during the POI. They cite the December 29, 1994, cost verification report, which states that "Aichi re-exported enough nickel and chromium during the POI in order to avoid paying any (import) duty amounts." They also cite the report's analysis that "since there are no duties included in the home market price, it may be appropriate to exclude the submitted addition to COP and CV for exempted duty, and to exclude the duty adjustment to USP."

The petitioners' contention rests on the concept that the statute requires that import duties be added to U.S. price in order to prevent the creation of dumping margins, or the increase of dumping margins, as a result of comparing duty-inclusive home market prices to duty-exclusive U.S. prices. Based on this interpretation, the petitioners maintain that granting a drawback adjustment in this case would contravene the object of the statute because the record shows that Aichi used both domestic and imported nickel and chromium to manufacture its stainless steel products, and because Japan's substitution drawback regulations allowed Aichi to obtain exemption from payment of duties for all of its imported nickel and chromium. Thus, they argue, all of Aichi's home market sales were at prices that were exclusive of duties on imported nickel and chromium. The petitioners object to the comparison of what they characterize as duty-inclusive U.S. prices to duty-exclusive home market prices.

Alternatively, they argue that if the Department adds duty drawback to Aichi's U.S. prices it should also add the same amount of import duties to Aichi's reported home market prices and reported cost of production.

The petitioners maintain that none of the arguments presented by Aichi in its case brief alters the Department's concerns voiced in the cost verification report. They contend that the reasoning inherent in Aichi's arguments suggests that the drawback adjustment is inappropriate. Petitioners characterize Aichi's reporting as specifically acknowledging that the purpose of the duty drawback adjustment is to "neutralize the duty difference between sales made to the U.S. and sales made in the home market."

Aichi maintains that, in its preliminary determination, the Department correctly made a price-related adjustment to Aichi's U.S. price for duty drawback earned in connection with its exports to the United States. Likewise, Aichi believes that the Department was correct in its preliminary upward adjustment to Aichi's COP and CV for the amount of duty drawback revenues included in its cost of production. According to Aichi, the upward adjustment to cost is necessary because COP and CV are intended to represent the theoretical cost of producing a product to be sold in the home market. Aichi states that its cost system does not specifically allocate duty drawback earned between cost of production for export products and cost of production for home market products. Thus, Aichi maintains, it needed to extract duty drawback savings from its normal cost system to enable the Department to identify the theoretical costs of production for a product to be sold in the home market. Aichi disagrees with the comments in the cost verification report, which noted that there may be a connection between the purpose of Aichi's price-related duty drawback adjustment and its cost-related duty drawback adjustment. Aichi argues that there is no connection because, while the price-related adjustment captures duty drawback savings which are earned in connection with exports to the United States, the cost-related adjustment simply isolates the duty drawback savings included in its normal cost accounting system for all products.

In addressing the petitioners' arguments, Aichi cites to the statute, Court decisions, Department practice, and the GATT, in maintaining that it is irrelevant whether products sold in the home market are produced from imported and duty-paid raw materials. According to Aichi, the petitioners mischaracterize the conditions under which the Department makes a duty-drawback adjustment.

In Aichi's view, the antidumping statute and the Department's practice do not require the respondent receiving rebates on, or exemptions from, import duties by reason of exportation of finished products, to demonstrate that its home market prices include import duties in order for its U.S. prices to be eligible for a duty-drawback adjustment. Aichi maintains that the statute and regulations make clear that the duty-drawback adjustment is to capture a difference in selling circumstances whereby a company receives import duty-drawback rights or earnings by virtue of exportation which are not

earned when products are sold on the home market. Citing several investigations, including Certain Welded Stainless Steel Pipe from Korea (57 FR 53693, 53696) (1992), Aichi seeks to demonstrate that the Department has consistently used a two prong test to analyze duty-drawback claims:

- Import duty and rebate are directly linked to, and dependent upon one another, and;
- The company claiming the adjustment can demonstrate that there were sufficient imports of imported raw material to account for the duty drawback received on the exports of the manufacturing product.

Aichi faults the petitioners for not noting that the Court of International Trade has flatly rejected past requests to add as a new condition to the two-prong test the mandatory inclusion of dutiable imported inputs into the production of the merchandise sold in the home market. Aichi cites *Chang Tieh Industry v. U.S.*, 840 F. Supp. 141, 147 (CIT 1993):

[Plaintiff's] arguments provide no basis from which to conclude that drawback adjustments should not be made unless ITA determines that the cost of the products sold in the home market is duty-inclusive. To require such a finding would add a new hurdle to the drawback test that is not required by the statute.

Maintaining that the petitioners' suggestion to make an upward duty-drawback adjustment to FMV by increasing the import duty component of cost of production/constructed value is tantamount to not making any adjustment at all, Aichi asks the Department to reject such an alternative. According to Aichi, the amount of import duties included in COP/CV will depend on several factors including: (1) Whether the company normally allocates duty-drawback earnings to the cost of production for export products, (2) the relative quantity of raw materials which are imported and exempted from import duties, and (3) the volume of home market sales relative to the volume of export sales to all countries. Aichi argues that none of these factors affects the calculation of the entitlement or earnings-based adjustment used to increase U.S. price. Aichi concludes that there is no legal or policy reason for denying or changing Aichi's drawback adjustment.

DOC Position

We disagree with the petitioners. The only germane issue is whether or not Aichi's documented duty drawback meets the two pertinent statutory criteria. At verification we examined Aichi's duty drawback and documented

that the application of the duty exemption program reported to the Department had been accurately described and quantified. Although Aichi then and now maintains that the imported materials need not have been physically consumed in the actual production of the U.S. shipments, company officials also demonstrated that imported alloys are used in the batches from which SSAs destined for the United States were produced. Most importantly, the inclusion of imported inputs in equal proportions in merchandise sold in both the home market and in the United States is *not* a requirement for obtaining a duty drawback adjustment. As stated by the Department in *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan* (57 FR 53705, 53710, November 12, 1992):

Other claims by petitioners do not speak to the test traditionally applied by the Department but rather seek to impose additional requirements for duty drawback claims, which are not required by the statute, the regulations, or past Department practice. There is no basis for petitioners' argument that the Department should not make a duty drawback adjustment, unless it determines that the cost of products sold in the home market includes duties on imported raw materials.

Therefore, we made a duty drawback adjustment to U.S. price in our final margin calculations following this principle. In accordance with this principle, the Department calculates the amount of duty included in CV. CV includes import duties which have been waived or rebated upon export because such duties are added to U.S. price. The cost figures used for constructed value reflect the weighted-average value of duty costs, which, due to Aichi's use of domestically-sourced inputs in the production of SSA, are not necessarily the exact equivalent of the duty drawback adjustment on U.S. sales.

Comment 5—Rebates

The petitioners argue that the Department should correct the mistake noted in the verification report at pages 20–23, whereby Aichi included the three percent consumption tax in the numerators of its formulas for allocating rebates and thus overstated the reported rebates. The respondent did not address this issue.

DOC Position

On February 23, 1995, the Department instructed Aichi to resubmit a computer tape correcting this calculation error. It did so on March 3, 1995.

Comment 6—Sales Outside the Ordinary Course of Trade

The petitioners agree with Aichi's contention that sales of ferritic angle should be considered as sales outside the ordinary course of trade because Aichi did not sell ferritic angle to the United States during the POI. They also agree with Aichi's argument that billing and expense adjustments that were erroneously classified as sales transactions should be excluded from consideration as a basis for FMV. They note without comment that Aichi contends that angles with spine length of seven meters are outside of the ordinary course of trade. However, they disagree with Aichi's contention that products for nuclear use, grade 304HT or of special straightness, should be considered outside the ordinary course of trade. The petitioners maintain that since no physical differences existed but, instead, different selling and packing costs were incurred, Aichi should have reported those under the respective charges and adjustment fields available in the sales listing. According to the petitioners, a number of the home market product codes used for those products Aichi identifies as within the ordinary course of trade are also used for those products which Aichi claims to be outside the ordinary course of trade. The petitioners argue that Aichi has not submitted evidence to show that the special sales were made through a different channel of trade or by way of some unusual marketing practice. In the petitioners' view, the Department's acceptance of a designation of outside the ordinary course of trade is normally reserved for sample sales and sales of secondary quality.

The petitioners contend further that, because Aichi did not provide timely evidence to support its claim that nuclear SSAs were sold outside the ordinary course of trade, the Department should not exclude those transactions from the final margin analysis. For support, the petitioners cite the CIT's ruling in *Timken Co. v. United States*, 865 F. Supp. 850 (CIT 1994), which overturned the Department's exclusion of certain sales as outside the ordinary course of trade where the respondents only alleged that their sales were not in the ordinary course of trade. Further, the petitioners maintain that Aichi's arguments fail because none of the circumstances identified by Aichi provide a sufficient basis for treating sales for nuclear applications as sales outside the ordinary course of trade. The petitioners maintain that SSAs sold for nuclear purposes possess the same anti-corrosive properties as SSA sold for

other applications. Moreover, they contend that special expenses incurred to make nuclear application sales could, and should, have been captured as claims for circumstance of sale adjustments.

Aichi maintains that the nuclear SSA sales involved such different circumstances that they should be excluded from the margin calculation analysis. According to Aichi, the Department verified that the nuclear SSAs are distinguished by their unique sales process and application, and that these factors are sufficient to call for the exclusion of nuclear SSAs from the antidumping analysis. The special requirements for nuclear SSAs, examined at verification, such as special documentation of quality, special warranties, special inspections, special packing, and special quality control inspections, in conjunction with relatively different quantity and prices in comparison to sales of SSA not certified for nuclear use, are factors Aichi lists in support of its request for exclusionary treatment. Aichi cites Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 52 FR 30700, 30704 (August 17, 1987) ("Tapered Roller Bearings from Japan") in support of its contention that the Department excludes sales when the transactions: (1) Involve individual sales at very small quantities at substantially higher prices; (2) most of the sales were later cancelled; and, (3) there were no comparable sales in the United States.

Contending that because the price of nuclear SSAs are set at vastly different price ranges due to the unique nature of the products and their sales process, Aichi rejects the possible use of circumstance-of-sale adjustments as inadequately capturing the basic sales differences. Aichi maintains that these unique circumstances are precisely the reason for excluding these sales as unrepresentative. Aichi further maintains that none of the home market product codes which the petitioners ascribe as applying both to sales designated as outside the ordinary course of trade and to sales designated as within the ordinary course of trade, pertain to sale of nuclear-use SSA.

DOC Position

We disagree with both parties. As to whether ferritic and nuclear-use sales were made outside the ordinary course of trade, Aichi has made an unsubstantiated argument. Aichi has not substantiated its claim under the guidelines enunciated in Tapered Roller Bearings from Japan, in support of its

contentions. Additionally, the claims set forth do not satisfy the criteria enunciated in Final Results of Antidumping Duty Administrative Reviews: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 56 FR 64,753, 64,753-55 (1991) (these terms were reiterated in the Court of International Trade's remand order in Circular Welded Non-Alloy Pipe from the Republic Korea). To determine whether sales were made outside of the ordinary course of trade, it is appropriate for the Department to analyze: (1) The number of home market customers buying the products; (2) the product standards and uses of the products; and, (3) price and profit differentials between the alleged non-ordinary sales and sales made in the ordinary course of trade. (See *Leclde Steel Co. vs. U.S.*, No. 92-12-00784, Slip 94-160, at 28-29 (CIT October 12, 1995) Remand Order. Sales of ferritic SSA comprise a relatively small percentage of the total quantity of sales. However, Aichi never reported the data to quantify particular expenses which make such sales unique, nor did it address the market situation of the customers of ferritic SSA. No evidence of special channels of trade for ferritic SSA exists. We examined the spectrum of sales of the grade of SSA to which ferritic SSA belong and found that many of the customers who purchase ferritic SSA also purchase austenitic SSA. On average, ferritic SSA prices are only slightly different from those of austenitic SSA of the same leg-length. No information was submitted providing analysis for determining profit differentials.

Sales of nuclear-use SSA also comprise a small percentage of the total quantity of sales, and only a slightly greater percentage of sales of the same angle type sold for non-nuclear use. On average, nuclear SSA prices are different from non-nuclear SSA of the same physical characteristics. However, Aichi never reported the data to quantify the nuclear-specific technical, packing, and warranty expenses it maintains are unique, nor did it address the market situation of the customers of nuclear-use SSA. No evidence of special channels of trade for nuclear-use SSA exists. We examined the spectrum of sales of the grade of SSA to which nuclear-use SSA belong and found that all of the customers who purchase nuclear SSA also purchase non-nuclear SSA. No information was submitted providing analysis for determining profit differentials.

It is Aichi's responsibility to provide such data in defense of its claims, both for ferritic and for nuclear-use sales.

Aichi provided almost no explanation of any unique sales conditions for ferritic SSA. As regards nuclear-use SSA, Aichi did not provide analysis of the quantitative factors required to determine that such sales are outside of the ordinary course of trade, but instead gave general documentation at verification that such sales had specific sales conditions. Those aspects of the sales process should have been accounted for by a detailed explanation and reporting of circumstance-of-sale adjustments. Therefore, we determine that neither ferritic nor nuclear-use SSA were sold outside of Aichi's normal course of trade.

We are removing the separate line-items for billing and expense adjustments from the sales database for use in the less than fair value comparison, since these were erroneously entered as sales transactions.

We are keeping in the database those sales of SSA which were of odd spine lengths, since these are subject merchandise.

Comment 7—Rate for U.S. Imputed Credit Calculations

Aichi maintains that it reported the correct interest rate to calculate U.S. imputed credit expenses and credit income because this is the rate it pays for the pre-shipment advance money it receives from Kanematsu. According to Aichi, the use of the home market interest rate at the preliminary determination was based on the faulty understanding that the interest rate Aichi had used was based on investment returns. Aichi maintains that the rate reported is that which Aichi pays to Kanematsu for having received the pre-shipment advance money deposited by Kanematsu with Aichi for sales greater than a certain set amount. Therefore, Aichi argues that the correct interest rate for all U.S. imputed credit calculations is the percentage Aichi pays Kanematsu for pre-payment.

The petitioners contend that, because the customer is credited for the time that Aichi held advance payment at a given rate for the period from the receipt of advance payment to shipment, the interest revenue that Aichi earned from the advance payments should have been calculated based on the difference between Aichi's short-term borrowing rate, as manifest by its use of promissory notes, and the interest rate that Aichi paid to Kanematsu. They argue that the Department should value the imputed interest revenue for advance payments at the difference between the two percentages.

In addressing Aichi's arguments, the petitioners counter that the Department should recognize that Aichi was incurring interest expenses for two distinct periods: (1) the period between receipt of the advance payment and the date of shipment, and (2) the period from the date of shipment to the date of final payment. The petitioners argue that Aichi's methodology does not account for the interest rate that Aichi incurred to finance its receivables for the post-shipment period. They maintain that the interest rate for the post-shipment period should be Aichi's home market promissory note discount rate, which reflects the only short-term borrowing that Aichi had during the POI. They argue that the Department should continue to use Aichi's promissory note discount rate to calculate Aichi's post-shipment credit expense.

DOC Position

We agree with the petitioners. The time value of the yen-denominated U.S. sales should be measured by Aichi's short-term borrowings as represented by its use of promissory notes in Japan. Measuring the value of advance payments received by Aichi (*i.e.*, Aichi's imputed credit revenue) should be measured by the difference between the time value of money to Aichi and the credit Aichi gives to Kanematsu for having advanced payment. With regard to establishing the time value of money, we verified Aichi's borrowing rate by examining the discount rate documented by Aichi's promissory notes on home market sales. We also verified the rate used by Aichi to credit Kanematsu for the value of the advance payment received before shipment. For those sales greater than a given amount, Aichi reduced the net total amount due from Kanematsu by the value of the advance payment for the time held, at an interest rate set internally. However, while this amount does reflect Aichi's internal evaluation of the time value of the money advanced by Kanematsu, the rate is not based on actual borrowing by Aichi during the POI. The Department, therefore, used a rate charged for borrowings to determine imputed credit, since by extending credit to its customers, Aichi acted as a lender. It is the Department's practice to use lending rates, as opposed to investment return rates, in calculating credit expenses. (See, *e.g.*, Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Color Negative Photographic Paper and Chemical Components Thereof from Japan 59 FR 16177, (April 6, 1994), and Final Determination of Sales at Less

Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Germany, 54 FR 18992, 19053 (May 3, 1989).

We have therefore recalculated imputed U.S. credit expenses based on the interest rate applied by Aichi's banks for discounting promissory notes and applied this rate to the portion of U.S. sales paid after shipment. The net value of Aichi's imputed interest income is measured as the difference between (1) the time value money based on Aichi's Japanese promissory notes and (2) the rate at which Aichi compensated Kanematsu for making advance payments. We have, therefore, also recalculated U.S. credit income on advance payments by using an interest rate that is the difference between the two rates.

Comment 8—Errors in U.S. Indirect Selling Expenses

The petitioners argue that the Department should correct the errors concerning the calculation of U.S. indirect selling expenses as identified in the verification report. In the report, the Department noted that on November 23, 1994, Aichi reported that the correct amount of U.S. indirect selling expenses was a percent of sales value slightly higher than that on the computer tape submitted for purposes of verification. On February 23, 1995, the Department instructed Aichi to resubmit a computer tape correcting this calculation error. On March 1, 1995, Aichi also requested that it revise the home market indirect selling expenses to reflect the narrative data submitted on November 23, 1994. The tape, with the requisite revisions, was submitted on March 3, 1995.

DOC Position

We agree with both parties. We used the revised percentages for both U.S. and home market indirect selling expenses, based on the data first submitted in narrative on November 23, 1994.

Comment 9—Home Market Inland Freight

Aichi states that in preparing the documentation for verification of the home market inland freight charges, several errors had been discovered prior to, and voluntarily disclosed at, verification and corrected for the Department officials' inspection. (The first type of error involved a recording error of the contract rate for the route. The second type of error was due to the fact that the actual delivery route for particular shipments was sometimes different from the standard delivery route reflected in the contract freight

rate schedule.) The effect of these errors, Aichi emphasizes, had been to understate most inland freight costs. Aichi stresses that shipment-specific reporting of such costs was prohibitively burdensome, since Aichi's computerized records do not contain the data necessary to electronically compile the information. At verification, Aichi adjusted incorrect amounts for specific transactions and provided a revision of the chart showing freight expense charges by domestic destination. Aichi argues that the Department should make the adjustments to the home market inland freight charges based on the verified freight expenses.

The petitioners contend that the Department should use the verified freight rate schedules originally reported and should not accept the revisions to the reported freight schedule rates. They argue that if the Department chooses to rely on the revised home market inland freight charges, it should only do so with respect to those home market sales actually found to contain erroneous freight costs. Additionally, they argue that any revisions to the respondent's home market inland freight costs should not include the amounts reported under the second inland freight variable field which they contend pertain to pre-sale expenses for shipments to the warehouses, and, therefore, should not be deducted as movement charges from FMV.

DOC Position

We agree, in part, with both parties. We used the originally reported values for most home market sales. We examined a selection of the mistakes made in reporting these values and found that, overwhelmingly, the charges under-reported inland freight claimed as a reduction of FMV. Aichi voluntarily disclosed the mistakes and was able to quantify the general effect of the inaccuracies. However, due to the volume and complexity of the errors, a complete revision was not examined at verification. Therefore, we used the originally reported charges, with the exception of the corrections specifically examined at verification; for those transactions we (1) used the revised freight-schedule data reported, and (2) added several invoice-specific corrections noted in the sales verification report at 31.

Because certain expenses reported separately pertain to pre-sale expenses for transportation to warehouses, these costs should be included as a portion of home market indirect selling expenses, rather than movement charge deductions to FMV. Aichi reported on

September 19, at 32-33 that "because shipment date to the customer is sale date, these shipments to the warehouse are pre-sale and reported in INLFRTH2." For those transactions whose corrections were examined at verification, the correct values for pre-sale expenses are included in home market indirect selling expenses.

Comment 10—Additional Price Protection Adjustment

Aichi originally argued that the Department should make an adjustment at the final determination for the additional price discounts discovered at verification, maintaining that the unreported discounts are no different from the other price protection discounts previously reported. For this reason, Aichi argued that the Department should adjust the applicable home market sales for these additional discounts.

The petitioners argue that the newly claimed discounts constitute a claim submitted for the first time in Aichi's case brief and as such, is untimely. In its March 3, 1995, submission, Aichi withdrew its claim for additional price protection program discounts.

DOC Position

Since Aichi has withdrawn its own claims, all arguments set forth by the interested parties are moot. We accept Aichi's withdrawal of the request for additional price protection adjustments.

Comment 11—Home Market Bank Charges

Aichi argues that the Department should make an adjustment for Aichi's home market bank charges as direct selling expenses because the Department verified that Aichi incurs bank charges for the processing of promissory notes in connection with home market sales. Aichi cites several cases, including Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela, 58 FR 27522, 27525 (May 10, 1993), to demonstrate that the proper treatment of bank charges is as a circumstance-of-sale adjustment.

The petitioners contend that the Department should reject Aichi's claim for an adjustment based on bank charges given the untimeliness of the claim. Additionally, they argue that the Department did not review documents related to this charge during verification. If the Department were to consider Aichi's claim as timely and substantiated by the verification record, the petitioners maintain that they believe that such bank charges would have also been incurred in the

discounting of anticipated revenues for U.S. sales. Therefore, they request that the Department either disregard Aichi's claim or, alternatively, make a similar adjustment for Aichi's U.S. sales.

DOC Position

We agree with the petitioners that the respondent's claim is untimely. Therefore, we did not make any adjustments for bank charges.

Comment 12—Product-Matching Criteria

Aichi argues that the Department should not conduct its sales-below-cost test on a model-specific basis, whereby if more than 90 percent of a model are found to be sold below the cost of production, constructed value is used as the basis of FMV. This claim is premised on Aichi's understanding that it is inconsistent with the statutory preference for price-to-price comparisons to resort to constructed value when a comparable model exists that in the home market that was sold above cost and that satisfies the 20 percent difference in merchandise test. Aichi contends that when there are no above-cost sales for a particular control number designated product, the Department should first compare the U.S. sale to the next most similar product.

The petitioners contest Aichi's proposed revision to matching home market sales of the next most similar model to U.S. prices when the number of sales of the most similar model were found to be insufficient to form the basis of FMV because they were made below the cost of production. They cite to the Department's Import Administration Policy Bulletin 92/4, issued on December 15, 1992, wherein the Department states that because the statute "specifies the determination of such or similar merchandise on the similarity of the merchandise only and not on whether the most similar model is sold above cost, section 771(15) appears to direct us to the use of constructed value when the most similar model is sold below cost."

DOC Position

We agree with the petitioners. As outlined in the December 15, 1995, Office of Policy Bulletin, it is the Department's practice to conduct the sales-below-cost test on a model-specific basis. The memorandum states that "in determining FMV, if the Department finds that sales of a given model, otherwise suitable for comparison, are sold below the cost of production, and the remaining sales of that model are inadequate to determine FMV, the

Department will use constructed value to determine FMV." This has been the Department's consistent practice since the issuance of that Bulletin. Therefore, we used constructed value to determine FMV when 90 percent of the sales of a given model were found to be sold below the cost of production.

Comment 13—Correction to Understated COP

The petitioners contend that the Department should correct all misstated material costs for purposes of the final determination by substituting the highest material cost reported by Aichi for the same grade of material.

Aichi agrees with the petitioners that for two sizes of stainless steel angle products, the reported materials cost does not reflect actual costs and notes that this error was due to an output quantity recording error in Aichi's normal cost accounting system. However, Aichi explains that since neither of these products were produced in significant volume, nor exported to the United States, nor compared to U.S. products in the Department's product matching, they have no relevance in the Department's LTFV comparisons. Accordingly, Aichi contends that the Department should not revise material costs for these two sizes of products. In the event the Department decides to revise material costs for these two sizes of products, Aichi urges the Department to use the average of reported material costs within the same grade of steel rather than the highest reported costs.

DOC Position

We agree in part with petitioner that Aichi's material costs for these two products should be revised. However, because the misstated material costs were due to re-coding errors from its cost accounting system, we do not consider it appropriate to penalize Aichi by using the highest material cost reported for the same grade of material. Instead, we agree with Aichi to revise the material costs for these two products using the average reported material cost within the same grade of steel.

Comment 14—Inclusion of Depreciation Expenses in COP

The petitioners argue that the Department should increase Aichi's reported depreciation expense to account for the special depreciation amount on environmental and conservation equipment. They state that these expenses were recorded in Aichi's accounting records and were reported in its audited financial statements for the fiscal accounting period that covered the POI. Accordingly, the Department

should increase Aichi's reported G&A expenses to include the special depreciation expense.

Aichi contends that it included all conventional depreciation expenses in its submitted G&A rate and that it did not include the special depreciation expense or the reversal of this special depreciation because these amounts strictly relate to Japanese tax law. However, if the Department determines that the special depreciation amounts should appropriately be included in the G&A rate calculation, Aichi believes that its COP and CV would decrease due to the fact that the reversal of previously set aside depreciation exceeds the current year's special depreciation.

DOC Position

The Department disagrees with the petitioners that the special depreciation expense should be included in the reported COP and CV amounts. This special depreciation relates solely to Japanese tax law which, in effect, allows companies to accelerate depreciation for purchases of environmental and conservation equipment. Since this depreciation relates solely to tax law and represents no real additional cost to the company, we excluded it from the COP and CV for purposes of the final determination.

Comment 15—Preliminary Ministerial Errors

The petitioners maintain that the Department should make corrections pertaining to the following: (1) Comparison of tax-inclusive U.S. prices to consumption tax-exclusive constructed value; (2) double-counting of other expenses for purposes of determining the SG&A amounts to be used in constructed value calculations; and, (3) double-counting of imputed credit in the formula used to calculate SG&A.

Aichi contends that the Department should incorporate a revision to SG&A in the CV calculations by revising two lines of its preliminary computer programming to include the factor for imputed credit as one of the components of SG&A, but as deductions. Aichi maintains that the imputed credit value should be a downward adjustment to SG&A, both when measuring whether actual or statutory (10 percent) SG&A are to be used, and when defining what actual SG&A is comprised of. According to Aichi, the values reported should be used as downward adjustments to interest expenses requested in the section D questionnaire, based on Aichi's relative value of finished goods

inventory and accounts receivable to total assets.

In addition, Aichi argues that, when revising the calculation of SG&A in its programming, the Department should also revise the program to deduct warehousing expenses. Aichi contends that this revision is required because the Department's calculations double-count warehousing. Aichi maintains that home market warehousing expenses are included in FMV as a component of total indirect selling expenses. According to Aichi, the indirect selling expenses for CV are inclusive of warehousing; thus SG&A brings home-market warehousing into FMV when CV is used.

DOC Position

We implemented the three corrections noted after the preliminary determination. Our final calculations took into account the following methodology:

(A) The calculations exclude the tax adjustment included in the U.S. price to CV comparison programming.

(B) The calculations eliminate the "other expenses" added to the SG&A test in the preliminary programming, as these double-counted these expenses.

(C) The calculations eliminate the separate variable for imputed credit used in its SG&A test in the preliminary programming, as this double-counted the expenses. Aichi's claim that the reported value is the required adjustment to interest expenses is not correct; as noted in the final OA memorandum, the interest expense value has already been adjusted for imputed credit by the ratio of Aichi's accounts receivables to total assets.

With regard to Aichi's request to modify the methodology for treating selling expenses, we disagree with Aichi, instead:

(D) We included home market pre-sale warehousing as a component of the indirect selling expenses in CV and also treated U.S. post-sale warehousing as a direct selling expense and adjusted for it as a circumstance-of-sale, pursuant to *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement V. United States*, 13 F.3d 398 (Fed. Cir. 1994).

Continuation of Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel angle from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from

warehouse, for consumption on or after November 10, 1994.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin (percentage)
Aichi Steel Works, LTD.	15.06
All Others	15.06

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the Customs Service officers to assess an antidumping duty on SSA from Japan, entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: March 24, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95-8017 Filed 3-30-95; 8:45 am]

BILLING CODE 3510-DS-P

The Scripps Research Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent

scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94-102. *Applicant:* The Scripps Research Institute, La Jolla, CA 92037. *Instrument:* NMR Spectrometer, Model Avance DMX750. *Manufacturer:* Bruker, Germany. *Intended Use:* See notice at 59 FR 49645, September 29, 1994. *Reasons:* The foreign instrument provides: (1) superior magnetic field homogeneity and stability with a smaller fringe field and (2) better lock stability (uses digital design), spectral fidelity (uses digital filters) and pulsed field gradient performance (uses 3-axis gradient probe). *Advice Received From:* The National Institutes of Health, January 9, 1995.

Docket Number: 94-112. *Applicant:* Department of Veterans Affairs Medical Center, Kansas City, MO 64128. *Instrument:* Microvolume Stopped Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 59 FR 52957, October 20, 1994. *Reasons:* The foreign instrument provides: (1) repetitive, single-shot operation providing wavelength dependent time resolved spectra at a rate of 100 000 per second, (2) sub-millisecond dead time and (3) sensitivity to signals <.02AV. *Advice Received From:* The National Institutes of Health, January 9, 1995.

Docket Number: 94-140. *Applicant:* Penn State University, University Park, PA 16802. *Instrument:* Electron Gun for Reflection Electron Diffraction. *Manufacturer:* Staib Instruments, Germany. *Intended Use:* See notice at 59 FR 66941, December 28, 1994. *Reasons:* The foreign accessory provides capability to change the angle of incidence of a high energy electron beam electronically, without affecting the beam's position on the sample surface, in a molecular beam epitaxy system using RHEED. *Advice Received From:* The Center for Telecommunications Research, National Science Foundation, February 9, 1995.

Docket Number: 94-144. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Gas Composition Analyzer, Model Epison II. *Manufacturer:* Thomas Swan, United Kingdom. *Intended Use:* See notice at 60 FR 442, January 4, 1995. *Reasons:* The foreign instrument provides: (1) non-invasive control of gas mixture ratios in a chemical vapor deposition (CVD) system using a unique ultrasonic technique requiring no physical contact with the gas stream and

(2) compatibility and sharing of control software with an existing CVD system. *Advice Received From:* The Center for Interfacial Engineering, National Science Foundation, February 9, 1995.

The National Institutes of Health and the National Science Foundation advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff
[FR Doc. 95-8007 Filed 3-30-95; 8:45 am]

BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95-012. *Applicant:* University of California, Berkeley, Department of Geology and Geophysics, Berkeley, CA 94720-4767. *Instrument:* Electron Microprobe, Model SX 50. *Manufacturer:* Cameca, France. *Intended Use:* The instrument will be used for studies of various materials including mineral grain separates, whole rock thin sections, soil particles, meteorites, archeological artifacts, experimental glass and crystallite charges, volcanic ashes, rare earth semiconductors, superconducting oxides, silicide and nitride ceramics, and super alloys. The instrument will also be used to teach Geology 401 (Electron Microprobe) to graduate students to provide an in depth