Dated: September 3, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–23110 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–811]

Certain Stainless Wire Rods From France: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On March 6, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is August 5, 1993, through December 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3434 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On March 6, 1996, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France (61 FR 8915, March 6, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or picklet rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and picklet. The most common size is 5.5 millimeters in diameter.

The SSWR subjet to this review is currently classified under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondent by using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Imphy S.A. and Ugine-Savoie, manufacturers/exporters of the subject merchandise (respondents), and from Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., United Steelworkers of America, AFL–CIO/CLC (petitioners). At the request of petitioners, the Department held a hearing on May 13, 1996.

Comment 1: Petitioners contend that the Department's decision to depart from its practice of examining constructed export price (CEP) sales during the POR because respondents were able to link-suspension of liquidation entries with sales should be changed for the final results. Petitioners urge the Department to revise its preliminary results to analyze all constructed export price (CEP) sales during the POR for the purpose of calculating antidumping assessment and cash deposit rates. Petitioners claim that there is nothing in the new statute that requires the Department to depart from its longstanding practice of focusing on CEP sales rather than entries in a review. Petitioners contend that the Department can analyze entries made prior to the suspension of liquidation so long as assessment is applied only to entries in the review period.

Petitioners claim that the only legal justification the Department has offered for its position that sales of merchandise entered prior to the POR should be excluded from the agency's analysis is that ''[m]erchandise proven to have entered to U.S. prior to the suspension of liquidation . . . is not subject within the meaning of section 771(25) of the Act'' (61 FR 8915). Petitioners contend that section 771(25) of the Act is merely a general provision defining ''subject merchandise'' as ''the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this title or section 303, or a finding under the Antidumping Act of 1921,'' and that this provision did not change prior law. Petitioners further note that nothing prevents the Department from examining CEP sales to derive antidumping rates in the Agreement on Implementation of Article VI of GATT 1994 (WTO Antidumping Agreement). In addition, petitioners claim that neither U.S. law (see 19 U.S.C. 1673e) nor the WTO Antidumping Agreement discusses the manner in which those antidumping duties are to be calculated or whether sales or entries should serve as the basis of that calculation.

Petitioners also contend that the Court of International Trade (CIT) held that it is perfectly lawful for the agency to analyze entries made prior to the suspension of liquidation so long as the assessment is applied only to POR entries (see *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States,* 18 CIT_____, 914 F. Supp. 535 (1995)).

Petitioners note that the CIT stated ''the consideration of all sales, rather than entries, made during the period of review may result in the consideration of entries made prior to the suspension of liquidation * * *'' Petitioners claim that the respondents' ability to link sales

with entries in this review does not mean that the CIT's holding in *Ad Hoc Committee* would not apply to this situation. Petitioners state that in the review which was the subject of *Ad Hoc Committee,* duties were only assessed on entries which occurred during the POR. Petitioners allege that so long as duties are only assessed on POR entries, the CIT's decision is valid in this proceeding and that the definition of ''subject merchandise,'' referring to merchandise on which duties will be assessed, consistent with the CIT's holding.

Petitioners claim that the Department's proposed regulations also recognize the continued need to focus on CEP sales rather than entries to calculate margins. Petitioners cite the preamble to paragraph (b)(1) of section 351,212 in which ''the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. In all cases, this will result in the assessment of duties on merchandise entered during the review period.'' *Antidumping Duties; Countervailing Duties; Proposed Rule, 1(Proposed Regulations)* 61 FR 7308, 7316 Feb. 27, 1996). Consequently, petitioners argue that the Department should maintain its practice of focusing on CEP sales for dumping analysis purposes but only assessing duties on entries in the POR.

Respondents argue that in the preliminary results of review, the Department correctly determined that respondents' merchandise sold during the POR, but proven to have entered the United States prior to suspension of liquidation should be excluded from the agency's analysis. Respondents note that petitioners do not contest that the merchandise excluded from review by the Department is non-subject merchandise, but that petitioners claim that the Department can legally review sales of merchandise entered prior to the suspension of liquidation provided that duties are only assessed on entries during the POR. Respondents claim that petitioners inappropriately cite *Ad Hoc Committee* and *NSK,* which respondents claim deal with different factual situations and are not applicable to this review.

Respondents argue that the statute, consistent with the WTO Antidumping Agreement, excludes merchandise entered prior to the publication of notice of suspension of liquidation. They claim that section 736(b)(1) of the Tariff Act of 1930, as amended, provides for the imposition of duties on ''entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2)''. Respondents also note that section 751 of the antidumping law directs the Department to determine the ''normal value and export price (or constructed export price) of each entry of the subject merchandise'' and calculate the ''dumping margin for such entry'' which is to serve as the basis for assessing duties on the entries. Therefore, respondents argue that the statute is clear that reviewing sales of merchandise that are shown to involve non-subject merchandise via linkage of sales to entries would exceed the mandate of the Department.

Respondents note that the Department's decision in the preliminary results is consistent with previous proceedings. In support of their position, respondents cite *Preliminary Results of Antidumping Duty Administrative Review of High-Tenacity Rayon Yarn from Germany,* 59 FR 32181, 32182 (June 22, 1994), and *Final Results of Antidumping Duty Administrative Review of Industrial Belts and Components and Parts Thereof, Whether Cured of Uncured, From Italy,* 57 FR 8295, 8296 (March 9, 1992). Respondents note that in reaching its determination in the *Yarn* case, the Department clearly stated its practice ''not to include ESP sales that were not subject to the antidumping duty order in the calculation of U.S. price, regardless of when the sale occurred.'' The Department further stated that ''such ESP sales would be excluded from the administrative review if [respondent] could provide adequate documentation, on a sale-by-sale basis, proving that the individual entries of merchandise prior to the preliminary determination could be traced to individual sales during the POR.'' Respondents note that the Department precisely followed this practice in the preliminary results of this review.

Respondents also not that petitioners' counsel has previously advised the Department that respondents can and should link entries of merchandise subject to an antidumping order to sales. Respondents claim that petitioners have not explained their change of position on this issue.

Department's Position: We disagree with petitioners. Sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department. Merchandise that entered the United States prior to the suspension of liquidation (and in the absence of an affirmative critical circumstances finding) is not subject merchandise within the meaning of section 771(25) of the Act.

As we stated in our preliminary results, under Section 751 of the Act, the Department is required to determine the normal value and export price (EP) or constructed export price (CEP) of each entry of subject merchandise during the relevant review period. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review. *Gray Portland Cement and Clinker from Japan, Final Results of Antidumping Duty Administrative Review,* 58 FR 48826 (September 20, 1993) (the Department did not consider ESP (now CEP) merchandise entered during the POR but sold after the POR). The proposed regulation cited by petitioners (section 361.221) recognizes this practice.

However, the Department has a well established exception to its practice of examining CEP sales during the period of review. That exception applies when a respondent is able to demonstrate, to the satisfaction of the Department, that the merchandise covered by a particular sale entered prior to the suspension of liquidation pursuant to the Department's preliminary determination in the LTFV investigation. *See, High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review,* 59 FR 32181 (June 22, 1994). In that review, the Department determined that because merchandise was entered prior to the date of the preliminary determination, it was not covered by the antidumping order. Therefore, the Department excluded these sales from the review. In contrast, in *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 42507 (August 16, 1995), the respondent was unable to link POR sales to specific pre-suspension entries and, therefore, the Department did not exclude those sales.

In this review, respondents claimed that certain merchandise was not subject to review because it entered prior to the period of review for sale by Metalimphy Alloys Corporation (MAC), an affiliated U.S. company during the period of review. The Department verified that respondents were able to link specific sales during the period to entries of merchandise prior to the suspension of liquidation. In the preliminary results, we excluded those sales from our analysis because respondent had demonstrated that the

merchandise entered prior to the suspension of liquidation.

Petitioners' cite of *Ad Hoc Committee* and *NSK* is not appropriate in this case. *Ad Hoc Committee* differed because, in that case, respondent argued the dumping margins and the assessment of duties on entries made during a review period should have been based on sales of merchandise entered after the review period. The approach advocated by respondent in that case raised the possibility of double counting or missing sales in future reviews, as noted by the Court. The Department's practice, as reflected in the present case, does not involve the danger of inconsistent future reporting. The *NSK* case did not involve a situation in which the respondent could link specific sales and entries. Further, in that case, the Department determined dumping margins based on sampling and not a review of all sales and entries.

Comment 2: Petitioners also contend that respondents' ability to link CEP sales with entries does not permit the Department to examine all entries during the POR, leaving the Department with an incomplete review of sales. Petitioners note that in the preliminary results, the Department did not examine either all sales or all entries during the POR but some very limited hybrid of the two, leading to an incomplete examination of subject merchandise. Petitioners contend that because respondents enter CEP merchandise in one POR and sell it in another POR, the Department cannot examine those entries because the sale has not been made. Specifically, petitioners contend that certain scenarios exist where CEP sales take place during the review but are not reviewed by the Department.

First, petitioners contend that CEP sales made during the POR but where the entry occurs after the POR are not being reviewed by the Department. Petitioners assert that these sales should be included in the Department's final results as the date of sale is in the POR.

Likewise, petitioners contend that CEP sales entered during the POR but sold after the POR are not included in the Department's analysis in this review. Petitioners contend that respondents have not reported the sales linked to these entries at all in their U.S. sales databases. Petitioners note that respondents also have pressed the Department to exclude POR sales with pre-POR entry dates because respondents can link sales with entries. Petitioners assert that the logical consequence of this exclusion is that all entries within the current POR with subsequent (post-POR) dates of sales should be examined in this review by the Department. However, they assert that respondents have not reported CEP entries with post POR sale dates.

Petitioners also noted that the Department included in its preliminary those CEP sales where the entry occurs during the POR but the sale pre-dates the POR. Petitioners contend that the Department has provided no explanation as to why it has included these sales in its analysis.

Petitioners contend that the only practical way to ensure coverage of subject merchandise is by examining all CEP sales. Petitioners argue that the Department include in its final results all sales that fall within the POR.

Respondents state that there is no merit to petitioners' suggestion that the Department's preliminary results lead to a non-comprehensive review of respondents' sales. They contend that petitioners' argument is irrelevant to the issue of whether sales of demonstrably non-subject merchandise are appropriately subject to review. Also, respondents assert that petitioners' position completely ignores the Department's instructions regarding what sales should be reported in an administrative review.

Respondents note that they reported all CEP sales consistent with the instructions of the Department's questionnaire. Respondents assert that the Department's questionnaire instructions ensure that reviews are comprehensive and that no sales of subject merchandise go unreviewed.

Further, respondents contend that petitioners' arguments regarding which sales are included and excluded from the Department's review is inaccurate. They state that in accordance with the Department's reporting instructions, all CEP sales of subject merchandise are included in the Department's initial review or in subsequent reviews.

Respondents argue that petitioners' position on the reporting of CEP transactions includes types of sales that are not covered by the Department's questionnaire as they involve neither POR entries nor post-importation POR sales. Respondents state that the Department will review these sales in the period in which entered. They also argue that the Department's questionnaire instructions do not cover CEP entries made during the POR but with a date of sale after the POR. Respondents contend that these are precisely the type of transactions, as recognized in *Gray Portland Cement,* for which the data required to calculate CEP are not necessarily available at the time of responding to a questionnaire for the period in which the merchandise entered.

Finally, respondents argue that petitioners have no basis for alleging that the sales will not be examined because the corresponding entries will have been liquidated at the time of the second administrative review. They argue under a master-list approach, the entries in the prior review period will not be liquidated until the sale occurs and, even if they are liquidated on a simplified assessment basis, the sale of subject merchandise could be pertinent to a subsequent review for purposes of determining a duty assessment rate and duty deposit rate.

Department's Position: The Department disagrees with petitioners that the Department did not make a comprehensive examination of all relevant sales or entries in the preliminary results. The Department closely examined respondents' submission of sales/entries data in this review, including specifically addressing this issue in its December 1, 1995 supplemental questionnaire and conducting verifications in both the home market and the United States. The Department verified that respondents correctly reported the quantity and value of subject merchandise pursuant to the Department's questionnaire instructions. The questionnaire instructed that respondents were to ''[r]eport each U.S. sale of merchandise entered for consumption during the POR except (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a *date of sale* within the POR'' (emphasis in original). The Department found that respondents correctly reported the quantity and value of their home market and U.S. sales consistent with the questionnaire instructions.

CEP sales made after importation will be examined by the Department in the POR in which they are sold consistent with the questionnaire instructions. As indicated in *Gray Portland Cement* and *NSK,* these are the type of CEP transactions for which the data required to calculate CEP may not be available at the time of responding to the Department's questionnaire because the sale occurs after the period of review. We also disagree with petitioner's claim that CEP sales made during the POR but entered after the POR (*i.e.,* after sale) will not be examined. These sales are not covered by the Department's questionnaire instructions for this review, as they do not involve POR entries or post-importation POR sales. The Department will review these sales in the POR in which they are entered

into the United States, if a review is requested. While the Department has some latitude to examine POR sales in lieu of examining POR entries, it is not necessary to do so when the sale occurs prior to entry. For example, respondents reported, and the Department included in this review, CEP transactions in which the merchandise entered during the POR but was sold before the POR (*i.e.,* prior to entry) pursuant to the Department's questionnaire instructions.

Consequently, the Department disagrees with petitioners' view that there has been an incomplete examination of sales and entries during this review. Respondents accurately reported their U.S. sales during the POR pursuant to the questionnaire instructions issued by the Department and the information was fully verified. Petitioners' scenarios of CEP sales and entries not examined in this review were either non-subject merchandise under section 771(25) of the Act or are subject merchandise that will be examined by the Department in any future reviews.

Comment 3: Petitoners argue that the Department's decision in the preliminary results to exclude sales during the POR where the entries preceded the POR would invite manipulation of the dumping laws. In addition, petitioners contend that if respondents can avoid a finding of dumping on sales following issuance of an antidumping order merely by linking those sales with entries made prior to the POR, linkage will become common as a way to avoid dumping duties. Consequently, petitioners argue that the linkage of values and entries would invite respondents to send in as much merchandise as possible before a preliminary determination and sell that merchandise during future years at dumped prices without recourse.

Petitioners note that in their letter to the Department of February 21, 1996, they indicated that there was price discrimination by respondents on CEP sales that entered the U.S. prior to suspension of liquidation when compared to POR sales. Petitioners assert that the Department's policy of linking sales with entries permits dumping practices that would cause a domestic manufacturer to lose business because of price discrimination during the POR. Consequently, petitioners contend that the purpose of the antidumping laws in remedying price discrimination taking place during the POR would be effectuated by the imposition of an antidumping margin that took account of the unfair pricing, even if the duties applied only to POR entries and were used to establish future cash deposit rates.

Petitioners assert that the critical circumstances provision of the statute would not prohibit manipulation. They contend that by law, a finding of critical circumstances is predicated on a number of statutory factors, including not only massive imports of the merchandise, knowledge that dumping is occurring, and a finding by the International Trade Commission (ITC) that the imports are likely to undermine the antidumping order. Thus, petitioners contend that critical circumstances findings go not only to the question of import surges prior to a preliminary decision but to resultant serious injury—a finding that, petitioners assert, is rarely made by the ITC. Petitioners also contend that the critical circumstances provision does not have anything to do with dumping practices in sales that occur after the investigation. Accordingly, petitioners claim that the Department cannot rely on the critical circumstances provision as a means of addressing this price manipulation problem with its approach in the preliminary results.

Petitioners contend that the Department should recognize that examination of CEP sales is critical not only to assessment of duties on past entries, but also to the establishment of a cash deposit rate. Petitioners argue that the cash deposit rate should reflect respondent's pricing practices during the POR. Petitioners state that failure to examine sales that relate to pre-POR entries will ignore potentially significant price discrimination during the POR merely because respondents beat the preliminary determination by their shipments.

Respondents contend that there is no manipulation of the antidumping laws, as all subject merchandise is reviewed by the Department, in accordance with its reporting instructions.

Respondents assert that the exclusion from review of sales of pre-suspension entries requires a rigorous demonstration of verifiable linkage between the particular entries being excluded and their subsequent sale. Respondents believe that linkage will not become the rule because the majority of respondents do not and cannot maintain the necessary information and records to do so. Respondents claim that the Department has recognized this situation citing *Proposed Regulations* at 7316.

Respondents also point out that the critical circumstances provision of the statute is designed to prevent manipulation. Furthermore, respondents note that the Department did not find critical circumstances in the LTFV investigation (see *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Wire Rods from France,* 58 FR 68865, 68868 (December 29, 1993)).

Respondents argue that petitioners' assertions that the Department's approach will invite price manipulation have nothing to with this case. Respondents claim that petitioners failed to establish any price discrimination between subject and non-subject merchandise (*i.e.* those sales that entered prior to suspension of liquidation) during this review. Respondents assert that the prices charged for all CEP sales examined by petitioners were virtually identical. Consequently, respondents contend that they did not engage any price discrimination.

Respondents also urge the Department to reject petitioners' suggestion that dumping margins should be calculated on non-subject merchandise for purposes of establishing a cash deposit rate for future entries. Respondents assert that it is inappropriate to use sales of non-subject merchandise for deposit rate purposes, in that such sales do not represent a fair, reasonable or accurate basis to gauge estimated duties which is the very purpose of the cash deposit.

Finally, respondents argue that the remedial purpose of the antidumping law in no way supports the examination of non-subject merchandise. Respondents contend that they changed their behavior as a consequence of the LTFV investigation. They argue that the law contemplates that the dumping margins (if any) calculated by the Department should accurately reflect respondent's behavior regarding subject merchandise, not the pricing practices during the POR that include non-subject merchandise.

Department's Position: We disagree with petitioners that the Department's decision in the preliminary results would invite manipulation of the dumping law. We do not agree with petitioners' contention that linkage would encourage other respondents to flood the U.S. market with merchandise prior to a preliminary determination. As we stated in our preliminary results, the exclusion of sales of merchandise entered prior to suspension of liquidation requires that a respondent must demonstrate, to the satisfaction of the Department, the linkage between the entry and the sale. This stringent requirement, coupled with the provisions on critical circumstances, eliminates a significant risk of manipulation. *See, e.g. Certain*

Corrosion-Resistant Carbon Steel Flat Products from Australia; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 42507 (1995) (the Department did not exclude certain sales because the respondent was unable to link the sales to specific pre-suspension entries).

We disagree with petitioners' contention that linkage would encourage dumping as most producers would not have the necessary linkage information that would meet the Department's requirement in a verification. In fact the necessary linkage has been demonstrated in only one case. (See *High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review*, 59 FR 32181, (June 22, 1994)).

We examined the issue of potential manipulation throughout the proceeding as well as at our sales verifications of respondents. We found no evidence of ''paired sales,'' where the price of that sale that entered prior to suspension of liquidation was priced lower than the simultaneous sales of the same merchandise to the same customer. We reviewed petitioners' February 21, 1996 submission to the Department concerning alleged price manipulation by respondents as well as respondents' rebuttal submission of February 22, 1996. After examining the issue, we found no evidence that respondents were engaged in price manipulation with sales of pre-POR entries (see Final Analysis Memorandum).

We also disagree with petitioners' arguments concerning critical circumstances in this review. The requirements of the critical circumstances provision demonstrate that Congress only intended that entries made prior to the LTFV preliminary determination be covered under very specific circumstances. In the LTFV investigation, the Department found no critical circumstances warranting inclusion of such entries.

We also disagree with petitioners' assertion that the Department's approach results in an inappropriate cash deposit rate. As discussed above, merchandise proven to have entered the United States prior to the suspension of liquidation (and in the absence of an affirmative critical circumstances finding) is not subject to merchandise within the meaning of section 771(25) of the Act. Sales of non-subject merchandise are not an appropriate basis for the Department to estimate the duties that will be due on future entries of subject merchandise.

Comment 4: Petitioners contend that the Department should not segregate home market channels of distribution for purposes of product group averaging. Petitioners state that the statute and proposed regulations provide for the derivation of averaging groups only for U.S. sales in investigations. Petitioners note that Section 777A(d) of the statute was modified by the Uruguay Round Agreement Act (URAA) to require the averaging of U.S. prices of investigations (see, 19 U.S.C. 1677A(d)(1)). Petitioners also state that under the Statement of Administrative Action (SAA), the averaging of U.S. price with respect to groups of comparable merchandise is limited only to the investigation phase of the proceeding (see, SAA at p. 843). In addition, petitioners state that the statutory section pertaining to averaging in reviews says nothing about the averaging of comparable merchandise in the home market based on factors relating to regions or customers.

Petitioners argue that the Department has erroneously extended this concept to averaging of home market prices in administrative reviews. Petitioners state that neither the plain language of the statute nor the Statement of Administrative Action contemplates extension of the product averaging concept to reviews.

Petitioners argue that the Department has already determined in this review that sales in the home market comprise a single level of trade based on common functions in both channels. Thus, petitioners contend that the Department cannot distinguish between its channels of distribution as different levels of trade for product group averaging. Petitioners also state that the channels of distribution are not distinct based on the class of customer, as all home market sales are to end users. Petitioners argue that the manner in which the sales are made—either from inventory or direct from factory—provide no basis to distinguish these alleged ''channels,'' as all sales are shipped direct from the factory. Consequently, petitioners allege that there is no basis to segregate home market sales in product group averaging based on these ''channels of distribution.''

Petitioners also assert that the Department cannot rely on the ''class of customer'' to distinguish averaging groups. They claim that all sales are to end users and do not involve different points in the claim of distribution of the product. Petitioners note that in past cases, the Department has differentiated between sales to distributors and end-users, recognizing that sales at different points in a chain of commerce may reflect different functions and/or different pricing practices. In support of their position, petitioners cite *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995) and *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18794 (April 20, 1994).

Petitioners argue that the ''channels'' of trade are not, in fact, different channels of distribution but merely reflect different sales entities that undertake the same role. In the past, petitioners contend that the Department has differentiated between different sales entities that undertake the same role (see, *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain*, 59 FR 66931, 66936 (December 28, 1994)).

Consequently, petitioners state that there is no legal or factual justification for segregating averaging groups based on whether the sale was made by Imphy/Ugine-Savoie or by an agent of the wholly-owned joint venture, Ugine-Service. Accordingly, petitioners argue that the Department should eliminate channels of distribution as a factor in its product averaging groups.

Respondents agree that the Department inappropriately included a preference for matching U.S. sales to home market sales in the channel of distribution which the Department deemed ''most comparable to that in which the U.S. transaction was made.'' Respondents contend that having determined that all home market sales were at the same level of trade, the Department should not have truncated its analysis of sales of the foreign like product. Respondents assert that the Department should have conducted its matching exercise on the basis of contemporaneous sales within the level of trade, without excluding sales based upon distribution channel. Respondents contend that the Department's approach subordinated physical comparability to a criterion (distribution channel) which has no foundation in the statute and, hence, which should not have been employed. They state that the Department's elevation of distribution channel over physical characteristics is inappropriate under the antidumping law. Respondents assert that the courts have made clear that selecting proper product matches based on physical characteristics lies at the heart of a fair dumping comparison (see *Timkpin Co.* v. *United States*, 630 F. Supp. 1327, 1336 (CIT 1986) and *Hussey Copper, Ltd.* v. *United States*, No. 95–145 at 6 (CIT 1995)). Respondents argue that in making its comparison, the Department's matching of U.S. and home market sales must be based on the closest identity of physical

characteristics (see *Hussey Copper, Ltd.* v. *United States*, No. 95–145 at 6 (CIT 1995)). Respondents state that any channel of distribution choice is irrelevant to the proper selection. Consequently, respondents contend that the Department's final results should be based on comparisons of contemporaneously sold, identical merchandise within the level of trade being compared and, if identical merchandise was not sold, the most similar merchandise contemporaneously sold within that level of trade should be utilized.

However, if the Department should regard EP sales as more comparable to sales by Imphy/Ugine-Savoie.

Department's Position: We agree with petitioners and respondents that the Department should not use home market channels of distribution for purposes of product group averaging in its calculation of normal value in this administrative review. The Department indicated in the SAA that in determining which sales to include with a particular average, ''Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and class of customer involved.'' SAA at 842. See also, *Proposed Regulations* at 7349. However, that section of the SAA is discussing the average-to-average methodology in investigations. With the exception of the contemporaneity rule in section 777A(d)(2), neither the statute nor the SAA provides any guidance of what, if any, factors should be considered when averaging in reviews. The facts of this case do not warrant averaging by channel of distribution.

Consequently, for the final results, we have not segregated home market channels of distribution for purposes of product group averaging of normal values to compare to U.S. prices. Instead, after correcting the model match program (see comment 6), we have taken the identical and similar merchandise matches generated by the model match program and attempted to match with contemporaneous sales within the same level of trade. If we found no contemporaneous identical merchandise within the same level of trade, we matched without regard to level of trade.

Comment 5: Petitioners allege the Department's level of trade analysis and decision to grant a CEP offset is fundamentally flawed and not consistent with the law. They assert that the Department was incorrect in analyzing CEP sales for level of trade purposes with an adjusted price that deducts U.S. selling expenses. Petitioners contend that there is no legal justification for adjusting the CEP to deduct actual U.S. selling expenses incurred in selling the merchandise prior to determining at what level of trade the sale is made. They claim that the statute says nothing about an adjusted CEP for level of trade purposes, but that the statute merely sets forth the factors the agency must consider in determining whether an adjustment for differences in levels of trade is appropriate.

Petitioners note that the Department, in its preamble to the *Proposed Rules,* stated that we will look at the CEP as adjusted but will look at the EP and normal value (NV) price as unadjusted for levels of trade. Petitioners assert that by making the U.S. CEP level of trade a ''constructed'' or ''adjusted'' level of trade but NV sales ''unconstructed'' or unadjusted, the Department is beginning its analysis with an apples-and-oranges comparison that is inconsistent with law and longstanding agency practice to ''make a fair comparison of sales in the two markets by reconstructing prices at a specific common point in the chain of commerce, when the merchandise is leaving the factory gates.'' (See *Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 43327, 43330 (August 16, 1993) and *AOC International, Inc.* v. *United States,* 713 F.2d 1568, 1572 (Fed. Cir. 1983), *cert. denied,* 465 U.S. 1022 (1984)).

Petitioners note that by law, the starting price for a CEP sales is the price offered to an unaffiliated purchaser in the United States and they contend that the Department cannot alter the statutory definition of CEP sales merely to ease its ability to make a level of trade adjustment.

Petitioners also assert that if the Department does not use the unadjusted starting price for CEP sales just as it does for EP and normal value sales, the Department will establish a system whereby sales that are made in the same fashion in both the U.S. and home markets will not be regarded as the same level of trade. Petitioners contend this approach is unreasonable and illogical. They note that the Department used the same alleged incorrect CEP deduction methodology in *Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15766, 15768 (April 9, 1996).

Petitioners also contend that the Department should not rely solely on selling functions as the determinant of whether different levels of trade exist. Petitioners state that the statute sets forth two factors—selling functions and price distinctions—as the basis for determining whether an adjustment for differences in levels of trade should be granted (see 19 U.S.C. 1677b)(a)(7)). Petitioners argue that the statute does not, however, state that levels of trade themselves are based on selling functions. Petitioners continue that the term ''level of trade'' is not new, but has been subject to much litigation and has consistently been defined as the point in the chain of commerce that a sale is made, such as the wholesale, retail or end-user level. In support of their position, petitioners cite *NAR S.p.A.* v. *United States,* 13 CIT 82, 707 F. Supp. 553, 556 (1989). Petitioners argue that based on this definition and the facts of record, the Department should treat all U.S. sales as a single level of trade.

Petitioners argue that if the Department persists in its assumption that section 772(d) adjustments to CEP must be made to place CEP on an equal basis as EP, then the Department cannot conclude that having made these adjustments the CEP and EP sales reflect different levels of trade, as the entire purpose of the adjustment was to render the CEP and EP prices as comparable.

Respondents contend that petitioners' challenges to the Department's methodology for analyzing level of trade and the decision to grant a CEP offset are without merit. Respondents assert that the methodology used by the Department for analyzing level of trade is consistent with, and required by, the law. They contend that the Department properly conducted its examination of the CEP level of trade based on the price after adjustments under section 772(d), i.e., looking at the selling functions performed by the foreign exporters in selling to MAC, an affiliated U.S. super-distributor, and to end-users in the home market. Respondents argue that the Department conducted a careful and thorough analysis of selling functions and properly determined that Imphy and Ugine-Savoie assumed significantly different and more selling functions for home market sales to end-users, which constitutes a more advanced level of trade than the CEP sales. Respondents state that pursuant to section 773(a)(7)(b), the Department appropriately granted a CEP offset.

Department's Position: We agree with respondents. As described in our recent *Preliminary Results of Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom,* 61 FR 35713 (July 8, 1996), the Department's position

is that it will, to the extent practicable, calculate normal value (NV) based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the difference levels of trade in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In implementing these principles in this review, we issued a supplemental questionnaire on December 13, 1995 concerning level of trade. We asked respondents to explicitly state what specific differences and similarities there were in selling functions and/or support services between all channels of distribution in the home market and the United States.

In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling activities associated with each channel of distribution claimed by the respondents. However, the starting point for our analysis was the separate channels. Therefore, we did not rely solely on selling activities.

Pursuant to section 773(a)(7)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the constructed price, i.e. after the expenses and profit were deducted under section 772(d) of the Act. Whenever sales were made by or through an affiliated company or agent, we considered all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act in CEP situations.

In reviewing the selling functions reported by the respondents, we examined all types of selling functions and activities reported in respondents' January 18, 1996 supplemental response on level of trade. In analyzing whether separate levels of trade existing in this review, we found that no single selling function was sufficient to warrant a separate level of trade in the home market (see *Proposed Regulations* at 7348).

In determining whether separate levels of trade existed in or between the U.S. and home market, the Department considered the level-of-trade claims of respondents. To test the claimed levels of trade, we analyzed the selling activities associated with the channels of distribution respondents reported. We determined that fewer and different selling functions were performed for CEP sales to MAC than for home market sales to end-users. In addition, we found that the home market sales involved a more advanced stage of distribution (to end-users) as compared to respondents' CEP sales in the United States (distributor).

In this review there were no sales of the foreign like product in the home market at the same level of trade as that of the CEP sales. Therefore, we examined whether a level-of-trade adjustment was appropriate.

We disagree with petitioners that there is no evidence of any commercial differences or distinct selling functions between the claimed two levels of trade in the U.S. market. For the U.S. market, respondents reported two levels of trade: (1) sales to end users through MAC (EP sales); and (2) sales to distributors through MAC, Techalloy and US&A (CEP sales). The Department examined and verified the selling functions performed for both levels of trade. As we indicated in our *preliminary results,* we found that the selling functions were sufficiently different in customer sales contacts, technical services, inventory maintenance, computer systems and administrative functions to warrant two levels of trade in the United States.

We disagree with petitioners' contention that the Department should base the level of trade on the starting price of CEP sales. As we discussed in the commentary of the *Proposed Regulations* at 7347, the Department believes that this position is not supported by the statute or the SAA, and that it is neither reasonable nor logical. First, the statue clearly defines CEP as a U.S. price ''as adjusted'' (Section 772(b) of the Act). Moreover, if the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Using the starting price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP an EPA and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the Department will follow the commentary of the proposed regulations which specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

Comment 6: Petitioners contend that the Department's product concordance computer program is flawed and does not compare U.S. sales to the most similar merchandise in accordance with the methodology that the Department intended to use. Petitioners note that they do not disagree with the proposed comparisons or the hierarchy and they agree that a focus on a hierarchy of grade, diameter and further processing is consistent with the approach adopted in the underlying investigation.

However, petitioners allege that the program had the following errors: (1) The program failed to search for differences in further processing before searching for different grades; (2) the product match program failed to search for differences in diameters before searching for different grades; (3) the program ignored similar grade comparisons and substituted non-similar grade comparisons; (4) where similar grade comparisons were not possible, the program selected dissimilar merchandise rather than relying on constructed value; and (5) the program improperly rejected similar comparison sales because the Department compared home market variable manufacturing costs stated in cost per kilogram to U.S. variable manufacturing costs stated in cost per pound for purposes of the 20 percent difference-in-merchandise analysis.

Respondents agree that the Department's model match computer program did not properly match U.S. sales to the identical or most similar merchandise sold in the home market. Respondents agree with petitioners that the Department should use the same model matching methodology that the Department used in the LTFV investigation. Respondents contend that

the Department should match identical U.S. and home market products by control number (CONNUM), before matching similar products. Respondent notes that to identify identical products, Imphy used its internal product code and Ugine-Savoie used its commercial grade and internal product code, in addition to the Department's specified characteristics (i.e., grade, diameter, and further processing). Therefore, respondents urge the Department to correct the ministerial error in the model match program and rely on CONNUMs to identify and match identical products.

Department's Position: We agree with both petitioners and respondents, in part, that the Department's model computer program did not match products as we intended. We have corrected the errors for the final results. For the final results, we have used the model match methodology used by the Department in the LTFV investigation and are therefore using respondents' CONNUMs to match identical products. The Department confirmed the accuracy of respondents' reported home market and U.S. CONNUMs, product codes and physical characteristics of the products at verification.

For those U.S. sales that do not have an identical match in the home market, the model match program identifies similar matches using the following three physical criteria: the grade of the wire rod, the diameter and whether the product was further processed or not. The Department's model match program matches similar products by grade using the identical or most similar grade as indicated in Appendix 3 of the January 11, 1996 supplemental response and the product matching hierarchy as described in Appendix 4 of the same January 11, 1996 supplemental response.

We disagree with petitioners that the Department's model match program failed to search for differences in further processing or diameters before searching for different grades. The program did search for differences in further processing or diameters; however, the error in the difference in merchandise portion of the program resulted in erroneous comparisons in the model match that made it appear that the program did not search for differences in further processing or diameters before searching for different grades. We have corrected this error for the final results.

Comment 7: Petitioners contend that the Department should apply facts available to recalculate imputed credit for certain U.S. sales with unreported payment dates, by relying on the date of the final results of this review as the date of payment, as the Department did in the underlying investigation. Petitioners also assert that when date of payment is not reported because payment has not been made, the Department's long-standing practice has been to use the date of the final determination as the surrogate for the date of payment. In support of their position, petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993) and *Final Determination of Sales at Less Than Fair Value Certain Stainless Steel Wire Rod from France*, 58 FR 68865, 68871 (December 29, 1993).

Department's Position: We agree with petitioners and we have used the date of the final results as date of payment for those U.S. sales when there is no reported date of payment, consistent with Department practice. (See *Carbon Steel Flat Products from Belgium* and *Certain Stainless Steel Wire Rods from France*).

Comment 8: Petitioners allege that the Department erroneously treated marine insurance expenses as an indirect selling expense. Petitioners contend that these expenses should be treated as movement charges, as the Department did in the underlying investigation and consistent with the Department's normal practice.

Department's Position: We agree with petitioners and have corrected the error for the final results.

Comment 9: Petitioners allege that the Department made the following ministerial errors: (1) The Department failed to include cost of manufacture in calculating constructed value; (2) the Department failed to convert the CEP offset from French francs to U.S. dollars; (3) the Department failed to cap the CEP offset by the amount of indirect selling expenses incurred in the United States; (4) the Department failed to include inventory carrying expenses in its calculation of total U.S. indirect selling expenses; (5) the Department failed to subtract respondents' repacking expenses from U.S. price; (6) the Department failed to subtract movement expenses from net home market price for its sales below-cost analysis; and (7) the Department failed to subtract home market indirect selling expenses from home market prices in conducting its arm's length test.

Department's Position: We agree with petitioners with the exception of point seven (subtraction of home market indirect selling expenses from home market prices for the arm's length test). In calculating the net home market price used for the arm's length test, the Department deducts direct selling expenses, discounts and rebates, movement expenses and packing from the home market gross unit price. There is no deduction for indirect selling expenses in the arm's-length test.

Comment 10: Respondents allege that the Department incorrectly converted the quantity fields for U.S. sales by dividing the quantity when it should have multiplied the quantity field by the pounds to kilogram conversion factor.

Department's Position: We agree and have corrected this error for the final results.

Comment 11: Respondents allege that the Department should not have deducted indirect selling expenses incurred in France in its calculation of CEP. Respondents claim that Section 772(d)(1) of the antidumping law does not provide for the deduction of indirect selling expenses incurred in the home market as they do not represent expenses ''associated with economic activities occurring in the United States.'' Respondents also note that the Department's proposed antidumping regulations confirm that indirect selling expenses incurred in the home market for sales to an affiliated importer are not expenses within the meaning of section 772(d)(1). Respondents claim the commentary makes a clear distinction between expenses associated with selling to the affiliated reseller in the United States and those expenses made to the affiliated reseller's unaffiliated customer.

Petitioners disagree with respondents' comment that the Department incorrectly calculated CEP by deducting all selling expenses, regardless of where incurred. Petitioners argue that the plain language of section 772(d)(1) requires the Department to deduct all expenses that relate to U.S. sales. Petitioners contend that this provision has been interpreted by the courts to require the deduction of the types of indirect selling expenses incurred by the foreign producer outside of the United States. In support of their position, petitioners cite *Silver Reed America, Inc.* v. *United States*, 683 F. Supp. 1393, 1397 (CIT 1988). Petitioners allege that the new statute did not change this fundamental requirement and, indeed, the legislative history and the SAA show clear legislative intent not to change the calculation of CEP from prior law (see, SAA at 823–4; S. Rep. No. 412, 103d Cong. 2d Sess. At 63 (1994). Petitioners argue that based on the plain language of the statute, the agency may not construe another, ambiguous sentence

in the SAA to limit CEP deduction to those incurred in the United States.

Department's Position: We agree with respondents in part. The Department does not deduct indirect expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996). As stated clearly in the SAA, and as required by the WTO antidumping agreement, that provision only permits deduction of expenses associated with economic activities occurring in the United States. *See SAA* at 823: Antidumping Agreement, article 2.4. However, some of the respondents' indirect expenses incurred in the home market are actually associated with economic activities in the United States. Specifically, liability insurance purchased in France is associated with U.S. economic activities to the extent it covers subject merchandise while warehoused in the United States. On the other hand, some indirect expenses involved in this case relate solely to the sale to the affiliated importer. For example, inventory carrying costs incurred prior to exportation relate solely to the sale to the affiliated importer. Further, unlike the situation in *Pasta from Italy*, the inventory carrying costs in the present case were not verified to relate exclusively to the product sold to the unaffiliated purchaser in the United States. Finally, contrary to petitioners' contention, the URAA changed the deductions in CEP situations. SAA at 823. Therefore, cases addressing pre-URAA practice are not applicable.

Comment 12: Respondents allege that the Department erroneously failed to take into consideration freight charges borne by customers in the U.S. market in the calculation of EP and CEP. Respondents claim that the Department should correct this apparent ministerial error by adding freight revenue to price.

Department's Position: We agree with respondents and have corrected this error for the final results.

Comment 13: Respondents claim that the Department overstated total profit by failing to take into account imputed expenses (credit expenses and inventory carrying costs) in total expenses used to calculate total actual profit. Respondents note that the Department took imputed expenses into account in its calculation of CEP and normal value. They argue that, to the extent that imputed expenses are considered expenses for that purpose, by definition, they are also expenses within total expenses pursuant to section 772(f)(2)(C). Consequently, respondents argue that the Department should correct this error in its final results of review and either include imputed expenses in the total expenses deducted from total revenue used in calculating total actual profit or eliminate their deduction in determining CEP and normal value.

Petitioners argue that the Department correctly calculated excluded expenses from the expenses used to calculate total actual profit. Petitioners note that the Department based its profit calculations on the actual total revenues and the actual expenses reported by respondents for subject merchandise. Petitioners contend where the Department relies on actual expenses in its calculation, the use of imputed expenses is unnecessary and unwarranted. Also, petitioners argue that including the imputed credit and inventory carrying expenses as respondents requested, would double-count interest expenses.

Department's Position: We agree with petitioners. It is the Department's policy to base the calculation of profit for CEP sales on actual revenues and expenses that are listed on the company's audited financial statements. Section 772(f)(1) and 772(f)(2)(D) state that the profit shall be an amount determined by multiplying the total actual profit by the applicable percentage and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In calculating the per unit cost figures, the Department has included net interest expense. Therefore, the Department does not need to include imputed interest expenses in the profit calculation since we have already accounted for actual interest in computing ''actual profit'' under section 772(f)(1). When the Department allocates a portion of the actual profit to each U.S. CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor. This methodology is consistent with Section 772(f)(1) of the statute which defines ''total United States Expenses'' as the total expenses described under section 772(d) (1) and (2). Such expenses include both imputed credit and inventory carrying costs.

Comment 14: Respondents contend that the Department should not have included indirect selling expenses incurred in France in the total United States expenses used to calculate CEP profit. Respondents state that indirect selling expenses incurred in the home market are not expenses encompassed within section 772(d)(1) of the antidumping law. Accordingly, respondents argue that for the same reasons that these expenses should also not be deducted from CEP (see Comment 11), they should also not be treated as U.S. expenses to which profit is to be allocated pursuant to section 772(d)(3).

Petitioners argue that the relevant expenses under section 772(d)(1) are all selling expenses related to U.S. sales, regardless of where incurred. Consequently, petitioners contend that the Department's decision in the preliminary results to account for all direct and indirect selling expenses in the CEP profit calculations is correct and should be maintained for the final result.

Department's Position: We agree with respondents in part to the extent these expenses are not part of the 772(d)(1) adjustment (see comment 11), they should also not be included in U.S. expenses for purposes of calculating CEP profit.

Comment 15: Respondents allege that the Department inadvertently overstated normal value by double-counting U.S. commissions in its circumstances of sale adjustment to normal value for EP sales. Respondents also contend that the Department double-counted selling and packing expenses and that the Department neglected to apply the CEP offset when basing NV on constructed value.

Petitioners agree with respondents that the Department double-counted commissions and should correct the ministerial error.

Department's Position: We agree and have corrected these errors for the final results.

Comment 16: Respondents contend that the Department's proposed duty assessment methodology is impractical and unnecessarily burdensome. Respondents claim in view of their verified linkage of entities to sales, the Department is in a position to issue assessment instructions on a master list approach in this review. Respondents note that the Department's commentary to the Proposed Regulations acknowledged that linking sales to entries results in the most precise determination/assessment of antidumping duties.

At the same time, respondents state that they recognize that the Department may prefer not to proceed with a master list approach, for its own convenience and that of the U.S. Customs Service. In that event, respondents state that they would not object to the ad valorem assessment rate approach set forth in the Department's proposed regulations provided that the rate is not constructed based on transactions involving entries of non-subject merchandise (i.e.,

merchandise outside the scope of the SSWR order because it entered prior to the suspension of liquidation). Respondents assert that encompassing sales of entities which are not subject to the antidumping duty order in this review in the calculation of the duty assessment rate would grossly distort the margin calculation and resultant duties.

Respondents assert that the proposed methodology contemplates calculating an individual duty assessment amount for EP transactions and a duty assessment rate for CEP transactions. Respondents argue that the proposed duty assessment rate methodology for EP transactions is entirely unnecessary since MAC is the only importer. Therefore, respondents argue there is no need to distinguish between EP and CEP sales. They contend that the Department should either compute a uniform duty assessment amount or rate, based upon the sales quantity or the entered value of the sale reviewed, as applicable, if it opts for a simplified assessment approach.

Petitioners state that the assessment instructions are consistent with the Department's past practice of assessing duties on entered values and also consistent with the proposed regulations. In support of their position, petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, 31693–5, and 31698—701 (July 11, 1991); and *Proposed Regulations* at 7316 and 7364. Petitioners contend that the only justifiable reason to rely on entries rather than sales is if the Department can tie all entries with sales and assess sale-specific duties on POR entries. Petitioners claim that where respondents cannot derive dumping margins on all POR entries as is true in this review, the use of a uniform assessment rate in lieu of sales-specific rates is a reasonable alternative for the Department. However, petitioners state that given this approach, the most accurate manner of determining the magnitude of dumping during the POR is based on an examination of all CEP sales, not entries, which petitioners claim is consistent with the Department's normal practice and its proposed regulations.

Department's Position: We agree with petitioners that our assessment instructions are consistent with those described in our *Proposed Regulations* at 7316. As the Department discusses in its commentary in the *Proposed Regulations,* section 351.212(b)(1) of the proposed regulations provides that the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. This is consistent with past practice and has been upheld by the courts. See, *Antifriction Bearings from France, et al.,* 60 FR 10900, 10902 (1995); *Koyo Seiko v. United States,* 796 F. Supp. 1526, 1529 (CIT 1992). In all cases, this will result in the assessment of duties on merchandise entered during the review period. To the extent possible, these assessments will be specific to each importer, because the amount of duties assessed should correspond to the degree of dumping reflected in the price paid by each importer. In this review, all subject merchandise was imported by MAC, an affiliated distributor of the respondents.

We disagree with petitioners' contention that the only reason to rely on entries rather than sales is if the Department can tie all entries with sales. As we stated in our *Proposed Rule,* it is the Department's belief that, except in unusual situations, it should not abandon the objective of assessing duties on the basis of entries. In most antidumping proceedings, it is necessary to assess duties on the basis of entries in order to maintain continuity with periods of no review and to avoid the over- or under-collection of duties.

Final Results of Reviews

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Imphy/Ugine-Savoie	8/5/93–12/31/94	10.06

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

Furthermore, the following deposit requirements will be effective, upon publication of this notice of final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that if the rate for a particular product is *de minimis i.e.,* less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigations. See *Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France,* (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 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 also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial

protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: September 3, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23234 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–M

AURA, Inc.; Notice Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision 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 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–074. *Applicant:* The Association of Universities for Research in Astronomy, Inc., Washington, DC 20036. *Instrument:* (2) 8M Optical Telescope Primary Mirrors. *Manufacturer:* REOSC Optique, France. *Intended Use:* See notice at 61 FR 41774, August 12, 1996. *Reasons:* The foreign instrumentation consists of two eight-meter mirrors with (1) image resolution approaching 0.1 arcsec at 2.2µm wavelength, with near diffraction limited imaging at longer wavelengths, (2) optical images of < 0.3 arcsec in size and (3) a contribution to total IR emissivity of ≤ 4%.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, is being manufactured in the United States.

The National Optical Astronomy Observatories advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

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

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23108 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

The Pennsylvania State University 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: 96–025. *Applicant:* The Pennsylvania State University, State College, PA 16804–0030. *Instrument:* Mach-Zehnder Interferometer, Model OP35–I/O. *Manufacturer:* UltraOptec Inc., Canada. *Intended Use:* See notice at 61 FR 28175, June 4, 1996. *Reasons:* The foreign instrument provides a dual beam configuration for in- and out-of-plane displacement in the 10Khz—35Mhz frequency range. *Advice received from:* The National Aeronautics and Space Administration, July 29, 1996.

Docket Number: 96–046. *Applicant:* Smithsonian Institution, Washington, DC 20560. *Instrument:* Electron Microprobe, Model JXA–8900R. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 61 FR 28175, June 4, 1996. *Reasons:* The foreign instrument provides a high accuracy element analysis of microareas with (1) a depth of focus of ±1mm at magnification of x 100 and (2) secondary electron image resolution to 5mm. *Advice received from:* The National Institute of Standards and Technology, July 25, 1996.

Docket Number: 96–054. *Applicant:* University of Georgia, Trifton, GA 31794. *Instrument:* Ground Conductivity Meter, Model EM38. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 61 FR 30221, June 14, 1996. *Reasons:* The foreign instrument provides: (1) rapid survey of soil conductivity patterns by not using ground electrodes and (2) georeferencing using GPS. *Advice received from:* The Department of Agriculture, July 24, 1996.

Docket Number: 96–058. *Applicant:* American Museum of Natural History, New York, NY 10024–5192. *Instrument:* Electron Microprobe, Model SX 100. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 61 FR 33902, July 1, 1996. *Reasons:* The foreign instrument provides high accuracy element analysis of microareas with precise point analysis electron imaging, x-ray mapping and cathodoluminescence. *Advice received from:* The National Institute of Standards and Technology, July 25, 1996.

Docket Number: 96–064. *Applicant:* University of California, Davis, Davis, CA 95616. *Instrument:* Magnetometer and Demagnetizer. *Manufacturer:* Molspin Instruments, United Kingdom. *Intended Use:* See notice at 61 FR 33903, July 1, 1996. *Reasons:* The foreign instrument provides portability and operability in harsh environments to measure remanent magnetism in rock samples in Antarctica. *Advice received from:* The U.S. Geological Survey, August 5, 1996.

The National Aeronautics and Space Administration, the National Institute of Standards and Technology, the Department of Agriculture and the U. S. Geological Survey 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. 96–23104 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

The Pennsylvania State University, 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.