during the subsequent 15-day period to October 24, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 600 Superior Avenue, East #700, Cleveland, OH 44114.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 2, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–19913 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2001]

Foreign-Trade Zone 147—Reading, Pennsylvania; Application for Subzone Status; Amendment of Application—C&J Clark America, Inc. (Distribution of Footwear)

Notice is hereby given that the application of the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, requesting special-purpose subzone status for the footwear warehousing/distribution facility of C&J Clark America, Inc. (Clark), in Hanover, Pennsylvania (66 FR 12459, 2/27/01), has been amended to include an additional building (71,153 sq. ft.) within the subzone. The building will be used for receiving, storage, handling, packaging, distributing and shipping footwear.

The application remains otherwise unchanged.

The comment period is reopened until September 7, 2001.

Dated: August 2, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–19914 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Preliminary Results of Antidumping Duty Administrative Review of the Suspension Agreement

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

ACTION: Notice of preliminary results of antidumping duty administrative review of the suspension agreement.

SUMMARY: In response to a request from petitioners, Bethlehem Steel Corporation, Ispat Inland, Inc., LTV Steel Company Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation (collectively domestic producers), the Department of Commerce (the Department) is conducting an administrative review of the Suspension Agreement on hot-rolled flat-rolled carbon quality steel (hot-rolled steel) from Brazil. This review covers three manufacturers and exporters of the subject merchandise, Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais (USIMINAS), and Companhia Siderurgica Paulista (COSIPA) during the period of review (POR) from July 19, 1999 through June 30, 2000. We preliminarily determine that CSN and USIMINAS have made sales below the reference price established by the Suspension Agreement. We also preliminarily determine that the amount by which the estimated normal value exceeds the export price for each entry by CSN and USIMINAS/COSIPA indicates that the dumping margin on certain entries exceeds 15 percent of the weighted average margin for CSN and USIMINAS/COSIPA in the LTV investigation. For reasons stated in this notice, the Department preliminarily determines that CSN and USIMINAS/COSIPA have violated the Agreement. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (CSN), Michael Ferrier or Dena Aliadinov (USIMINAS/COSIPA), or Nancy Decker, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398, (202) 482–1394, (202) 482–3362, and (202) 482–0196, respectively.

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, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2000).

Background

On July 6, 1999, the Department entered into the Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil produced by CSN, USIMINAS, and COSIPA. *See Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38792, (July 19, 1999) (Suspension Agreement). This agreement was entered into under section 734(c) of the Act and section 351.208 of the Department's regulations. Section 734(c)(1) of the Act requires: (1) that the agreement eliminate completely the injurious effect of exports to the United States of the subject merchandise and (2) that the suppression or undercutting of price levels of domestic products by imports of the merchandise will be prevented; and (2) that for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. To satisfy the statutory criteria, the Suspension Agreement requires all signatories (CSN, USIMINAS, and COSIPA) to sell covered products in the United States at or above established reference prices and to satisfy the requirements of section 734(c)(1)(B) of the Act. The reference prices are set on a quarterly basis and include all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage, and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. *See* the Suspension Agreement, 64 FR 38793.

On July 28, 2000, petitioners requested the Department to conduct an administrative review of the sales and cost of USIMINAS, COSIPA, and CSN to ensure that the parties are in compliance with the terms of the Suspension Agreement. The Suspension Agreement stipulates that the Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of hot-rolled steel from Brazil are at prices consistent with the terms of the agreement. Pursuant to petitioners' request, the Department initiated this administrative review on August 25, 2000 (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000)).

On October 24, 2000, the Department issued the antidumping questionnaire. On November 28, 2000, the respondents submitted section A of the questionnaire. On December 22, 2000, the respondents submitted sections B–D of the questionnaire. On January 25, 2001, the Department issued the first supplemental questionnaire. On February 7, 2001, the Department issued a second supplemental questionnaire. On February 12, 2001, the respondents submitted their responses to the first supplemental questionnaire. On February 16, 2001, the Department issued the third supplemental questionnaire, and on March 2, 2001 the respondents submitted their responses to the second and third supplemental questionnaires. On May 11, 2001 and May 18, 2001, the Department issued the fourth and fifth supplemental questionnaires. On June 6, 2001, the respondents submitted their responses to the fourth and fifth supplemental questionnaires.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing the preliminary results in an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days. On March 8, 2001, the Department published a notice of extension of the time limit for the completion of the preliminary results by 120 days, until July 31, 2001. *See* Administrative Review of the Suspension Agreement on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13891 (March 8, 2001).

Period of Review

The review covers the period July 19, 1999 through June 30, 2000. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

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

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

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

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

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

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

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

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

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

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	070–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 150,000 psi Aim.

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

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

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

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

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	A1
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0,005% Min	Treated	0.01–0.07%

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

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

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

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

Verification

As provided in section 782(i) of the Act, we verified information using standard verification procedures, including the examination of the relevant sales and financial records.

Our verification results are outlined in the public versions of the verification reports. See COSIPA Sales Verification Report dated May 9, 2001 and July 31, 2001, USIMINAS Sales Verification Report dated May 9, 2001 and July 31, 2001, CSN Sales Verification Report dated May 9, 2001 and July 31, 2001 and other U.S. sales verification reports dated May 9, 2001 and May 11, 2001.

Use of Facts Available

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

The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent

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

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

USIMINAS/COSIPA

The Department's questionnaire of October 24, 2000 instructed the respondents to report all home market sales of the merchandise under review. In a letter dated November 1, 2000, from USIMINAS/COSIPA and CSN commenting on the Department's October 24, 2000 questionnaire, respondents requested not to report cut-to-length hot-rolled merchandise in the home market. In the letter, respondents asserted that given the restrictions in the Suspension Agreement for what respondents can export to the United States, home market sales of cut-to-length sheet are an example of a hot-rolled product that ''cannot be deemed identical and would unlikely ever be deemed most similar to the products exported to the United States.'' The respondents had argued that the Suspension Agreement stipulates that the respondents can only sell coil products in the U.S. market. CSN and COSIPA reported sales of cut-to-length hot-rolled merchandise in the home market; however, in USIMINAS' December 22, 2000 Section B submission, USIMINAS only reported home market sales of coil. In supplemental questionnaires dated February 7, 2001 and May 11, 2001 the Department requested USIMINAS to report home market sales of cut-to-length hot-rolled merchandise and elaborated in the May 11, 2001 questionnaire that if this merchandise is not reported, ''the Department will apply adverse facts available to any non-identical matches that could have matches to cut-to-length products.'' In both instances, USIMINAS stated that it would not report cut-to-length merchandise in the home market. USIMINAS asserted that there is no possibility for the Department to compare a U.S. sale of USIMINAS coil to a home market sale of cut-to-length material, as it has sufficient sales of identical or similar hot-rolled coil in the home market for comparison to all U.S. sales.

Within the model match hierarchy, all characteristics preceding the coil/cut-to-length characteristic are more defining. For instance, the characteristic immediately preceding the coil/cut-to-length characteristic is width. If the widths differ between a U.S. market coil sale and a home market coil sale, then a more suitable home market match for this U.S. observation would be a cut-to-length product with the same width (all other characteristics being equal), not a home market coil with a different width. In this instance, we have found certain U.S. sales that do not have an identical match at the width characteristic (but all other characteristics were equal). Therefore, a cut-to-length product of the same width (with all other characteristics being equal) as the U.S. sale would be a better match than the coil product with a different width. Since USIMINAS has not reported its home market cut-to-length sales, we have no way of determining if one of these sales would provide a better match.

USIMINAS did not report cut-to-length sales, even though it had the ability to do so. Therefore, pursuant to section 776(a) of the Act, since USIMINAS failed to cooperate by not acting to the best of its ability in reporting cut-to-length sales, we are applying adverse facts available. We are assigning USIMINAS, as adverse facts available, the highest calculated margin for any USIMINAS/COSIPA U.S. sale observation, where a home market cut-to-length product is a potentially more suitable match than a home market coil product. See USIMINAS/COSIPA Preliminary Analysis Memorandum, dated July 31, 2001.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope Review'' section above and sold in Brazil during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 24, 2000, antidumping questionnaire. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Affiliated Respondents

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of the other, such parties are considered to be affiliated for purposes of the antidumping law. Furthermore, it is the Department's practice to collapse affiliated producers for purposes of calculating a margin when they have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and the facts demonstrate that there is significant potential for manipulation of pricing or production. In the final determination of the investigation underlying this suspension agreement, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Notice of Final Determination of Sales at Less Than Fair Value Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; 64 FR 38756, 38759) (Final Determination). In response to our questions concerning this issue, USIMINAS/COSIPA have indicated that there have been no major changes in the corporate structure and

affiliates. Moreover, USIMINAS/COSIPA has indicated that the Department should follow it's prior final determination on this issue. We preliminary determine that there are no facts on the record to indicate that the relationship between the parties has changed, nor that the Department's basis for collapsing these entities has changed in any way. Therefore, we have preliminarily determined to collapse these entities for purposes of this review.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, the Department determines Normal Value based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP) transaction. The NV LOT is that of the starting price of sales in the comparison market or, when NV is based on CV, that of the sales from which the Department derives selling, general, and administrative expenses (SG&A) and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the LOT of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

CSN

CSN claims to sell directly to trading companies, as well as to end-users and distributors through an agent (see further discussion of agency sales below) in the U.S. market. CSN also claims to sell to service center/distributors and end-users in the home market. CSN states that it provides warranties, technical assistance, returns, and freight arrangements equally to service centers/distributors and end-users. Thus, the selling functions provided to different classes of home market customers do not vary significantly. CSN provides the same selling functions for U.S. sales except for technical assistance. Technical assistance is only provided with respect to home market sales. However, CSN notes that this assistance is mainly provided in connection with warranty claims which are available to all customers. We preliminarily find that the varying levels of technical assistance provided in this case do not establish a significant difference between the services provided to home market and U.S. customers. Consequently, the Department preliminarily determines that there is only one LOT in the home market and that it is at the same level as the single LOT in the U.S. market.

USIMINAS/COSIPA

In the home market, USIMINAS/COSIPA claims to make sales through two primary channels of distribution: (1) direct sales to distributors and end users and (2) sales through affiliated distributors.

In determining whether separate levels of trade exist in the home market, the Department first examined available information on the record about the company's selling functions for each channel of distribution. USIMINAS/COSIPA claims that the selling functions performed by the affiliated distributors in the second channel of distribution (downstream sales) are much more significant than those performed by USIMINAS/COSIPA in their direct mill sales to end-users and unrelated distributors. To support its claim, the respondent provides the following examples of selling functions provided for downstream sales but not mill direct sales: inventory maintenance for customers, more flexible credit terms, special warehousing, technical services beyond those offered by the mills, special processing (on-site cutting and slitting activities), and more extensive delivery services. Of these selling functions, special processing does not appear to be a traditional selling function relevant to the Department's LOT analysis but, rather, is a production cost. For mill direct sales, USIMINAS/COSIPA provides only limited after-sales services/warranties, freight and delivery arrangements, and technical advice.

In addition, we have combined two selling functions, inventory maintenance and special warehousing (which, together, we refer to as ''warehousing'') because we find that they were not sufficiently distinct to warrant being treated as unique selling functions.

Based on these types of services performed by the affiliated distributors and the greater number of services provided by the affiliated distributors compared with the mills, we preliminary determine that the selling functions of the affiliates for downstream sales were significantly different than those for mill direct sales, and therefore, we have determined that downstream sales by affiliates were made at a different LOT than other HM sales. Thus, we preliminarily determine that downstream sales and mill direct sales represent two different home market LOTs.

In the U.S. market, COSIPA sold directly to unaffiliated trading companies, while USIMINAS stated that it sold directly to U.S. customers (service centers and large-volume steel consumers) using unrelated trading companies as its agents. USIMINAS/COSIPA noted that although the channels of distribution used by each company are slightly different, there is no difference between the types of services offered to each group of customers. USIMINAS/COSIPA claim that all U.S. sales are made at the same level of trade as USIMINAS/COSIPA's direct home market sales to end users and distributors. Both USIMINAS and COSIPA provided very few services to its U.S. customers. The limited selling functions associated with U.S. sales include warranties only for merchandise that conforms to the specifications ordered and freight and delivery arrangements. As noted above, these services are also provided to home market mill direct customers. The only additional selling function offered for home market mill direct sales is a limited amount of technical advice. Both home market mill direct sales and U.S. sales involve sales to large customers, including service centers/distributors that resell steel and end-users. The Department finds the limited type of selling functions for mill direct sales in the home market to be similar to U.S. sales. Therefore, based on our analysis of selling functions, the Department finds U.S. sales to be at the same LOT as home market mill direct sales.

Sales Involving Trading Companies

USIMINAS indicated that all its sales to the United States were made through

trading companies acting as its agent; CSN makes the same claim for some of its sales to the United States. For these sales, USIMINAS and CSN invoice the trading companies, then the trading companies issue an invoice marked ''as agents on behalf of USIMINAS'or ''as agent on behalf of CSN'' to the end customers. (See Preliminary Analysis Memoranda, dated July 31, 2001, for a full description of the transaction flow). Both CSN and USIMINAS claim that the end customer is their customer and the trading companies are merely acting as an ''agent.'' CSN and USIMINAS claim that since the trading companies are acting as ''agent,'' the title to the merchandise does not pass to the trading companies. Furthermore, for any merchandise currently held in inventory, the trading companies would have already sold this merchandise if not for their obligation to sell such merchandise at prices above the reference price established under the Suspension Agreement. Additionally, the trading companies paid duty on ''commissions'' earned as agents. Since CSN and USIMINAS are using trading companies as ''agents,'' they argue that the sale to the first unaffiliated party in the United States is the sale to the end customer, not the trading company.

During verification, we were able to confirm that the trading companies solicit and interact directly with the U.S. customers. Both CSN and USIMINAS negotiate a price that they charge the trading companies. Although both CSN and USIMINAS claim that the end customer is their customer, we found that the trading companies have the power to negotiate and set the price and terms of the sale to the U.S. customer with few restrictions (*e.g.,* it must be above the reference price and for USIMINAS, the trading company does not have unlimited freedom to raise the DDP price to any level). CSN and USIMINAS have indicated that the trading companies are compensated by a commission. However, the commission they refer to is simply the difference between the price charged to the end customer by the trading company and the sum of the price charged to the trading company by the mills plus any expenses that the trading company pays (*e.g.,* duty, U.S. brokerage and handling, *etc.*). Both companies have indicated that there is no set formula or method for determining this difference. In addition, the companies have indicated that the trading company could have a negative commission. Therefore, we find that this claimed commission reflects the profit on the subsequent sale by the trading company rather than a commission to the trading company.

We also found that both CSN and USIMINAS invoice the trading companies when the merchandise is shipped from the mill, whereas the trading companies do not invoice the end customer until after the end customer receives the merchandise. Consequently, there is often a lengthy gap between these invoices. In cases where the end customer cancels the sale before delivery, we found that the trading companies are responsible for warehousing the merchandise and for selling the merchandise. For these sales, the trading companies would have already paid the mill, and there is no indication that the mill would reimburse the trading companies for the payment it made on a canceled sale. Accordingly, we find that, inconsistent with an agency relationship, the trading companies bear the risk of loss for unpaid sales. While the invoices and sales contracts indicate that the trading companies are holding themselves out as agents on behalf of the mill (CSN or USIMINAS), we found no other documentation supporting this fact. In addition, neither company had a written agreement with their trading companies to act as their agents. While the absence of a written agreement is not dispositive of an agency relationship, we find that nothing in the record supports the conclusion that either CSN or USIMINAS controls or directs the trading companies in their transactions with end users.

Based upon the facts outlined above, we preliminarily determine that for these sales and for purposes of this suspension agreement, the first sale to an unaffiliated party in the United States is the sale from the exporter to the trading companies. Therefore, for these sales we have compared the prices to the trading companies (plus any other charges, not included in the price to the trading company, incurred in bringing the steel to the first customs port of discharge in the U.S. market) to the applicable reference prices. We have also used the price to the trading companies in calculating export price.

Date of Sale

As stated in 19 CFR 351.401(i), the Department normally will use invoice date as the date of sale unless another date better reflects the date on which the exporter or producer establishes the material terms of sale. Both CSN and USIMINAS/COSIPA reported the date of the nota fiscal (*i.e.,* the date the product leaves the factory) as the home market date of sale, and the date of the order confirmation as the date of the U.S. sale.

CSN maintains that it uses the date of the nota fiscal for home market sales in its accounting records because this is the date on which material terms of sale are finalized. The Department used the nota fiscal date in the investigation (see Final Determination at 38768). CSN states that there have been no significant changes to CSN's sales process since the investigation.

For its U.S. sales, CSN reported the order confirmation date, stating that it is the date of sale defined in the Suspension Agreement even though CSN uses the commercial invoice date in its normal accounting records. The Suspension Agreement defines the date of sale as the date on which a signatory confirms an order for a fixed quantity of hot-rolled steel at a fixed price (see Suspension Agreement, 64 FR 38793).

USIMINAS and COSIPA maintain that for their home market sales, the nota fiscal is the date on which the material terms of sale are first finalized. The nota fiscal is also used by both companies' accounting systems to register home market sales.

For their U.S. sales, USIMINAS and COSIPA also reported the order confirmation date as date of sale stating that it is the date of sale defined in the Suspension Agreement.

Based upon the respondent's arguments for these preliminary results, we have used the dates of sale as reported for all three companies.

Fair Value Comparisons

To determine the amount by which estimated normal value exceeds export price, the Department compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with sections 777A(d)(2) and 734(c)(1)(B)of the Act, the Department calculated monthly weighted-average prices for NV and compared these to individual U.S. entries of each exporter.

Downstream Sales

In a letter dated November 1, 2000, USIMINAS, COSIPA and CSN informed the Department of their intent not to report resales by their affiliated companies as part of their questionnaire responses.

CSN

On November 28, 2000 and revised on March 8, 2001, CSN provided aggregate sales information of its affiliated reseller. According to CSN, its reseller's sales of products made from hot-rolled steel are non-subject merchandise and/or would not match to the U.S. sales. The remaining sales by the reseller account for a small percentage of CSN's

total home market sales. We have not required CSN to report resales by their affiliates.

USIMINAS/COSIPA

In the USIMINAS/COSIPA response to the Department's questionnaire, these companies did not report their downstream sales. They cited the following reasons: (1) USIMINAS/ COSIPA sales to their affiliated distributors represent a relatively small portion of the total sales of USIMINAS/ COSIPA; (2) most of the merchandise the affiliated distributors resell is different from what the mills export to the United States; (3) the Department's determination from the investigation that the sales by the distributors are at different levels of trade from those by the mills. USIMINAS' and COSIPA's sales to affiliated resellers in the home market accounted for more than 5% of total sales, and the Department's supplemental questionnaire dated February 7, 2001 asked USIMINAS and COSIPA to provide aggregate sales data for each of their affiliated resellers. In the March 2, 2001 response, USIMINAS and COSIPA provided aggregate sales information of their affiliated resellers.

Based upon the information on the record, we preliminarily find that sales by the affiliated resellers are at a separate level of trade from the direct sales by the mills. Numerous direct mill sales are identical to or very similar to U.S. sales and are at the same LOT, and are available for matching to the U.S. sales. Therefore, we have preliminarily determined that the sales by affiliated resellers would likely be used to match to few, if any, U.S. sales, and we have not required respondents to report resales by their affiliates.

Export Price/Constructed Export Price

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

The Department made company-specific adjustments as follows.

CSN

The Department made deductions from the starting price, where appropriate, for international freight, foreign inland freight, and foreign brokerage and handling incurred by CSN on its U.S. sales, in accordance with section 772(c)(2)(A) of the Act.

USIMINAS/COSIPA

The Department made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, international freight, and foreign brokerage and handling expenses.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, the Department calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compared each of the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each of the respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, the Department determined that the home market was viable for all respondents. Therefore, the Department has based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Arm's Length Test

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

Cost of Production Analysis

The Department initiated an investigation to determine in fact whether the respondents made home market sales during the POR at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. Based on the fact that the Department had disregarded sales in the less than fair value investigation (the most recently completed investigation/ review of CSN and USIMINAS/ COSIPA at the time of initiation in this review) because they were made below the COP, the Department has reasonable grounds, in accordance with section 773(b)(2)(A)(ii) of the Act, to believe or suspect that respondents made home market sales in this review at prices below the cost of producing the merchandise.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of each (CSN and combined USIMINAS/COSIPA) respondent's cost of materials and fabrication for the foreign like product, plus an amount for SG&A, including interest expenses, and packing costs.

We used the information from each respondent's section D questionnaire and supplemental questionnaire responses to calculate COP. We compared the weighted-average COP for each respondent to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the

COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act. In addition, we determined that such below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product and relied on sales of similar merchandise to match, if available (see CEMEX v. United States, 1998 WL 3626 (Fed. Cir.)).

Our cost test for each respondent revealed that less than twenty percent of each respondent's home market sales of certain products were at prices below their respective COP. Therefore, we retained all such sales in our analysis. For other products, more than twenty percent of each respondent's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Preliminary Analysis Memoranda, July 31, 2001.

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data each respondent supplied in its section D questionnaire and supplemental questionnaire responses.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. Consistent with past practice, we adjusted NV for the full amount of IPI and ICMS taxes collected on the subject merchandise, in accordance with section 773(a)(6)(B)(iii) of the Act, because these are VAT taxes. We made adjustments for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(iii) of the Act and 19 CFR 351.410. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and(B) of the Act.

CSN

For CSN, we based NV on prices of home market sales that passed the cost test. We made deductions for applicable billing adjustments, and certain taxes as discussed above. We made deductions, where appropriate, for inland freight pursuant to section 773(a)(6)(B) of the Act. We made COS adjustments for differences in credit, interest revenue, and warranty expenses, where appropriate.

USIMINAS/COSIPA

For USIMINAS/COSIPA we based NV on prices of home market sales that passed the cost test. We made deductions for applicable billing adjustments, discounts, and taxes. We made deductions, where appropriate, for inland freight, warehousing, and inland insurance, pursuant to section 773(a)(6)(B) of the Act. We made COS adjustments for imputed credit expense, interest revenue, and warranties.

Based on verification, we have made adjustments to home market warehousing, U.S. warranties and U.S. and home market imputed credit expenses. We have also disallowed COSIPA's home market technical services expenses as a direct selling expense. *See* USIMINAS/COSIPA Preliminary Analysis Memorandum, dated July 31, 2001.

Price-to-CV Comparisons

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

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. (For an explanation of this method, *see* Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Preliminary Results of the Review

The purpose of the review is to review the current status of, and compliance with, the terms of the Suspension Agreement.

Compliance With Section IV(E) of the Agreement

Under the statute, the Department is required to review sales made under the Agreement to determine whether the terms of the Agreement are being complied with. Specifically, section IV(E) of the Agreement requires that for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed a specified amount. That limit is 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

We examined the extent to which CSN or USIMINAS/COSIPA may have made sales that were not in compliance with this provision of the Agreement. To this end, we examined the number of sales which had margins that exceeded the limit established by the Agreement and the amount by which these sales exceeded this limit. As a result, we found that at least one company made sales at dumping margins that exceeded the limit

established by the Agreement and that neither the number of sales nor the amount by which they exceeded the limit was insignificant. On this basis, we cannot conclude that these sales inconsistent with the Agreement are inconsequential or inadvertent. See USIMINAS/COSIPA and CSN Preliminary Analysis Memoranda, dated July 31, 2001.

We note that the respondents have taken issue with some aspects of our approach in analyzing these sales. Specifically, the respondents argue that they are affiliated with the trading companies through which they sold to the United States and therefore the appropriate basis for our analysis are the sales by the trading companies. However, even if the Department were to determine that the trading companies acted as agents and that the first unaffiliated U.S. customers are the trading companies' customers, as respondents have argued, the extent to which the dumping margins for entries from CSN and USIMINAS/COSIPA would exceed 15 percent of the weighted average margin for CSN and USIMINAS/COSIPA in the LTFV investigation would not be insignificant. Therefore, we would still have found that there were sales in violation of the Agreement.

Compliance With Section IV(A) of the Agreement

Section IV(A) of the agreement contains the reference price requirements for merchandise subject to the agreement. We compared the price charged by the mill to the first unaffiliated customer in the United States to the reference price for the applicable period for that sale (based upon the order confirmation date). The Suspension Agreement states that the reference price includes all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. In addition, the Suspension Agreement stipulates that if the sale for export is on terms that do not include these expenses, the Signatories will ensure that the actual terms are equivalent to a price that is not lower than the reference price. Therefore, we have added to the price to the first unaffiliated U.S. customer any of these charges that were not included in the price terms to that first unaffiliated U.S. customer, and we compared this total to the applicable reference price.

In our analysis, we examined the number of sales and the amount by which they were made at prices below the reference price established by the Suspension Agreement. As a result, we found that for at least one company, neither the number of sales made below the reference price established by the Suspension Agreement nor the amount by which they were below the reference price was insignificant. On this basis, we cannot conclude that these sales inconsistent with the Agreement are inconsequential or inadvertent. See USIMINAS/COSIPA and CSN's Preliminary Analysis Memoranda, dated July 31, 2001.

Therefore, we preliminarily determine that CSN and USIMINAS/COSIPA have made sales in violation of these terms of the Agreement. Pursuant to Article X of the Agreement, the Department may engage in consultations with any Signatory to the Agreement regarding this determination. In the event that this determination is confirmed in the final results of this review, we will take whatever action we deem appropriate under section 734(i) of the Act, the Department regulations and Article XI of the Agreement.

Disclosure/Briefing Schedule

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument (no longer that five pages including footnotes) and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

This administrative review and this notice are in accordance with Section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19911 Filed 8–7–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: August 7, 2001.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–4052 or (202) 482–3020, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (2001).

Background

On June 28, 2001, the Department received a timely request from Groupstars Chemical Company, Ltd. (Groupstars), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on silicon metal from the PRC. This order has a June anniversary month. The period of review is, therefore, June 1, 2000 through May 31, 2001.