and passed the HM sales verification because no discrepancies were found in any of the items verified. GMN asserts that only a small number of items were not verified, mainly due to GMN's manpower shortage and the absences of certain key personnel during portions of the verification. It claims that because it could not complete the sales verification, the Department cancelled the cost verification. GMN believes it is being penalized for the Department's decision not to conduct a cost verification. GMN argues that as a worst case analysis, the Department should calculate a margin by applying partial BIA only to those items which were not

Department's Position: We disagree with GMN. GMN did substantially cooperate with our requests for information. However, we were not able to complete sales and cost verifications of GMN's response successfully. As stated by GMN, "the company made every attempt to complete this review and has * * * now found that its resources are so diminished * * * that it is unable to proceed further in the sales verification or to prepare for and conduct the cost verification." See GMN letter dated January 13, 1994: Withdrawal of Request for Review. Consequently, we were unable to satisfactorily verify GMN's response, and therefore we have used second-tier BIA. The second-tier BIA rate was GMN's highest previous rate, which was from the LTFV investigation.

Comment 2: Torrington asserts that NPBS failed verification, and as such, the Department should apply a first-tier BIA rate to the entire NPBS response. Specifically, Torrington cites the NPBS Sales Verification Report dated March 1, 1994, and claims that, taken as a whole, the following seven deficiencies represent failure of verification: (1) Failure to report certain HM sales, which the Department has referred to as "zero-priced sales" (NPBS Sales Verification Report), (2) failure to report HM billing adjustments, (3) a slight overstatement of domestic inland freight expenses, (4) a discrepancy between its reported interest rate and its verified discount rate, (5) an overstatement of indirect advertising and sales promotion expenses, (6) an overstatement of export selling expenses for U.S. sales, and (7) an overstatement of other indirect selling expenses. Additionally, Torrington asserts that NPBS's actions in this review are egregious, given that they failed to report all HM sales in the second administrative review.

NPBS argues that deficiencies three through seven are of the types of discrepancies which typically arise at verification. As for the unreported billing adjustments and unreporting of certain HM sales, NPBS asserts that their effect is insignificant and that the Department disregarded these in the previous review. Furthermore, NPBS asserts that its omission of HM sales (which caused a failure of verification) in the second administrative review is under appeal and is not relevant to the facts in this case.

Furthermore, NPBS asserts that the Department should consider the unreported billing adjustments to be insignificant under 19 CFR 353.59 and to disregard these. At the least, NPBS argues, the Department should disregard those unreported billing adjustments for which the *ad valorem* effect is less than 0.33 percent. As for the unreported sales, NPBS contends that, had the sales been reported, the net effect would have been to lower FMV for all but two of the models. Therefore, the Department should disregard these sales.

In response to NPBS, Torrington argues that since the billing adjustments were never reported, there is no basis for determining their insignificance. Furthermore, the *ad valorem* effect is above 0.33% for a significant number of models. As for the omission of "zero-priced" sales (*i.e.*, certain HM sales), Torrington contends that the Department cannot allow NPBS to customize its HM database by not reporting sales and then manually changing the price.

Federal-Mogul states that the Department correctly and reasonably applied a second-tier BIA to those affected transactions in light of the seriousness of the omissions.

Department's Position: We disagree with Torrington that we should reject NPBS' response and use BIA for all U.S. sales. Although we did find a number of deficiencies at verification, as a whole, those deficiencies do not warrant the application of total BIA. Instead, for deficiencies three through seven, we have adjusted the data accordingly. For those U.S. sales whose matching FMV was based on transactions affected by either the unreported billing adjustments or the unreported "zeropriced" sales, we applied a second-tier BIA rate of 45.83%. The full extent of the "zero-price" sales, which does not significantly impact the overall integrity of the response, is documented on the record. As for the unreported billing adjustments, we agree with Torrington in that these should not be considered separately in terms of their *ad valorem* effect, but rather their effect taken as a whole. NPBS cooperated fully with all aspects of the verification. Although NPBS neglected to report the billing and quantity adjustments due to the labor intensive task of matching them to a sale, its response was otherwise useable.

Comment 3: NSK claims that because it fully cooperated with the Department's requests for information, the Department should not apply a punitive BIA to a few unmatched transactions that were incorrectly reported.

Torrington contends that the Department reasonably invoked an adverse presumption that the margins on these few unmatched sales would have been higher than the margin on remaining sales or the prior margin, and should continue to apply the current BIA margin for the final results.

Department's Position: We agree with Torrington. Since NSK did not provide the correct information to match the U.S. and the HM transactions, we have applied a second-tier BIA rate to those few unmatched sales in calculating the final dumping margin. We have made the adverse assumption that the margins on unmatched sales would have been higher than the margin on the remaining sales and have therefore applied a partial BIA to these unmatched transactions.

4. Circumstance-of-Sale Adjustments4A. Advertising and Promotional Expenses

Comment 1: Torrington states that NMB/Pelmec failed to demonstrate that its reported U.S. advertising and sales promotion expenses were indirect in nature. Torrington believes that the Department should reclassify certain of the reported expenses as direct selling expenses. In rebuttal, NMB/Pelmec argues that at verification it provided the Department with sample advertisements demonstrating that they were indirect in nature.

Department's Position: We agree with NMB/Pelmec. At the U.S. verification, NMB/Pelmec provided samples of its U.S. advertisements and sales promotions and demonstrated that they were not product specific or directed at a specific customer.

Comment 2: Torrington alleges that Koyo failed to demonstrate that all of its reported U.S. advertising and promotion expenses were indirect in nature. Torrington cites Timken Company v. United States, 673 F. Supp. 495, 512–13 (CIT 1987), to argue that the burden is on respondents to demonstrate that U.S. expenses were indirect and to support Torrington's position that the Department should treat Koyo's U.S. advertising expenses as direct selling expenses.

İn rebuttal, Koyo argues that the Department explicitly verified Koyo's