533 (b) and (c), and because it does not constitute an ''interpretive rule'' or ''general statement of policy,'' both of which constitute exceptions to the APA's rule-making procedures, the Department should have published in the **Federal Register** an advance notice of its proposed VAT methodology and should have given interested parties an opportunity to comment. OAB argues that by not doing so, the Department has violated 5 U.S.C. 533 and should postpone issuance of final results of this administrative review pending completion of the APA rule-making procedures.

Petitioners state that, contrary to OAB's arguments, the Department's method for adjusting for VAT constitutes an interpretive policy designed to implement and interpret section 722(d)(1)(c) of the Act. Petitioners contend that *Carlisle* and *IPSCO* represent two cases in which the Department, for administrative purposes, created rules that had no basis in the statute. As a result, rule-making procedures were in order. Petitioners claim that the Department's VAT adjustment methodology was developed specifically to implement section 722(d)(1)(c) of the Act, and, as a result, is an interpretive rule which serves to clarify or explain existing law, rather than create new law, rights, or duties (*see Timken Co.* v. *United States*, 11 CIT 786, 673 F. Supp. 495, 514 (1987) (*Timken*), citing *Cabia* v. *Egger*, 690 F.2d 234, 238 (D.C. Cir. 1982)). As such, it constitutes an exception to the APA's rule-making procedures. Petitioners argue that the Department is, therefore, not in violation of 5 U.S.C. 533 and that APA rule-making procedures are unwarranted in this case.

Department's Position: We agree with the petitioners. The Department's VAT adjustment methodology was developed in accordance with the CIT's decision in *Federal-Mogul* in which the CIT held that the addition to USP under section 772(d)(1)(c) of the Act should be the result of applying the foreign market tax rate to the price of the U.S. merchandise. As a result, our VAT methodology represents a methodology developed by the Department for the purpose of implementing section 722(d)(1)(c) of the Act in accordance with the CIT's decision in *Federal-Mogul*. Unlike the methodologies contested in *Carlisle* and *IPSCO*, our VAT adjustment methodology does not create a new rule, right, duty, law, or standard. Rather, our VAT methodology, because it interprets the law, is not subject to the APA (*Cf. Timken*, 11 CIT at 514, agreeing with the Department that its 10–90–10 sales- below-cost methodology was not subject to the APA since it interpreted current law rather than made new law). The Department's methodology is the means by which we interpret, implement, and administer section 722(d)(1)(c) of the Act, not a new rule or law.

Comment 3: OAB contends that, if the Department does not alter its VAT methodology, it should change the way in which it determines the amount of antidumping duties to be assessed on merchandise subject to this administrative review. Respondent argues that when assessing duties on imports of brass sheet and strip from Sweden, the Department, rather than relying on its current assessment methodology, should apply the *ad valorem* margin to the actual entered value, which is not inflated by the VAT. OAB points out that not only is there no case law prohibiting such an assessment approach, but this approach would also eliminate the artificial inflation of respondent's margins caused by the Department's current VAT methodology. OAB concludes by stating that the Department would thereby meet its fundamental obligation to calculate fair and accurate margins.

Petitioners argue that the assessment methodology proposed by the respondent is simply another method by which the multiplier effect can be eliminated from the Department's margin calculations and by which tax neutrality can be achieved. As such, this assessment approach would be in violation of section 722(d)(1)(c) of the Act and contrary to both *Zenith* and *Federal-Mogul* for the same basic reasons as argued in Comment 1. Petitioners contend that the Department should, therefore, reject OAB's argument and not alter its assessment methodology.

Department's Position: We disagree with the OAB's contention that if we do not alter our VAT adjustment methodology, we should then ensure that our assessment methodology eliminates the multiplier effect. As explained by the Federal Circuit in *Zenith*, it was not the intent of Congress to eliminate the multiplier effect or for the Department to seek tax neutrality. Rather, the exporters themselves, by engaging in dumping, are responsible for any artificial inflation of their dumping margins due to the operation of section 722(d)(1)(c) of the Act. Therefore, as the Federal Circuit has held in *Zenith*, the elimination of the multiplier effect is not necessary. The Federal Circuit's holding in *Zenith* is just as applicable to our assessment methodology as it is to our VAT adjustment methodology or to any other methodology used in our analysis that can potentially be manipulated to eliminate the multiplier effect. Therefore, we will not adopt an assessment policy, or any other methodology, for the sole purpose of eliminating any multiplier effect caused by the application of our VAT adjustment methodology.

Furthermore, our policy is to base assessment on the entered value of sales, and when we do not have the entered value of sales, we will base assessment on the total calculated USP. Because we do not have entered value of sales information for this review, we will base the duties to be assessed on imports of Swedish brass sheet and strip on the total USP calculated from OAB's response.

Unpaid U.S. Sales

Comment 4: Petitioners claim that during verification the Department discovered that, due to financial difficulties, one of OAB's U.S. customers has yet to pay OAB for merchandise it purchased during the review period and took delivery for, and that OAB has left its books open for these unpaid sales. In addition, the petitioners point out that when the Department requested that OAB identify these unpaid U.S. sales, OAB stated that it would be too difficult to accomplish during the verification (*see* the Department's Home Market Verification Report for OAB (March 9, 1994) (Verification Report)). Petitioners contend that because the Department was unable to completely verify these sales, because at verification these sales had not yet been paid for, and because there is no evidence on the record that OAB has since received payment for this merchandise, the Department should not rely on OAB's reported invoice prices for these unpaid sales. Rather, because OAB failed in its questionnaire responses to report that there were problems with these sales and failed to identify these sales at verification, petitioners urge the Department to follow its past practice in similar circumstances. Specifically, the petitioners argue that, as complete BIA for these unpaid U.S. sales, the Department should use the highest calculated margin for an individual sale subject to the administrative review, as it did in *Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 38114 (1991) (*SS Cooking Ware*).

Petitioners also contend that if the Department decides to base USP on OAB's reported invoice prices for its unpaid U.S. sales, then the Department