has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on November 13, 1996, at 9:00 a.m., at the Memphis Chamber of Commerce, 22 North Front Street, Suite 200, Memphis, Tennessee 38103.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 23, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 6, 1997).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations: U.S. Department of Commerce, Export Assistance Center, 22 North Front Street, Suite 200, Memphis, TN 38103.

Office of the Executive Secretary Foreign-Trade Zones Board, Room 3716 U.S. Department of Commerce 14th and Pennsylvania Avenue, NW Washington, DC 20230.

Dated: October 11, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–27053 Filed 10–21–96; 8:45 am]

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International Trade Administration

[A–557–805]

Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia

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

SUMMARY: On May 20, 1996, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on extruded rubber thread from Malaysia. The review covers shipments of this merchandise to the United States during the period April 2, 1992, through September 30, 1993.

Based on our analysis of the comments received and the correction of certain clerical and computer program errors, we have changed the preliminary results. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: October 22, 1996.

FOR FURTHER INFORMATION CONTACT: Cameron Werker or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone, (202) 482–3874 and (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1996, the Department of Commerce (the Department) published in the Federal Register the preliminary results of its administrative review of the Antidumping Duty Order on Extruded Rubber Thread from Malaysia (61 FR 25190). The Department has now completed that administrative review in accordance with § 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this review is dispositive.

This review covers the following producers/exporters of extruded rubber thread: Heveafil Sdn. Bhd. (''Heveafil'') and Rubberflex Sdn. Bhd. (''Rubberflex''). The period of review (POR) is April 2, 1992, to September 30, 1993.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Merchandise Comparisons

In determining similar merchandise comparisons, in accordance with Section 771(16) of the Act, we considered the following physical characteristics, which appear in order of importance: (1) Quality (*i.e.*, first vs. second); (2) size; (3) finish; (4) color; (5) special qualities; (6) uniformity; (7) elongation; (8) tensile strength; and (9) modulus.

Fair Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV) for Rubberflex and Heveafil, as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

For both respondents, we disregarded sales to the United States and third countries which were written off as bad debt because bad debt was accounted for in respondents' reported indirect selling expenses.

United States Price

For sales by both respondents, we based USP on purchase price, in accordance with Section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when the exporter's sales price (ESP) methodology of § 772(c) of the Act was not otherwise indicated. In addition, where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with § 772(c) of the Act.

A. Heveafil

We removed all sales from the sales database with entry dates after the POR. We also eliminated certain transactions that we verified were not subject to the antidumping duty order. Specifically, these transactions were sales to a U.S. customer that were shipped to Hong Kong for further manufacturing into non-subject merchandise (see page 7 and exhibit 5 of the Malaysian sales verification report, dated August 30, 1995).

We based purchase price on packed, CIF prices to the first unrelated purchaser in the United States. We revised Heveafil's data based on our verification findings. We made deductions from USP, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs duty, harbor maintenance and merchandise processing fees, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act.

At verification, we found that Heveafil did not report certain purchase price sales of extruded rubber thread which entered the United States during the POR. Because we specifically instructed Heveafil to report all entries into the United States during the POR

as well as all sales made during the POR, we based the margin for these unreported sales on the best information otherwise available (BIA) in accordance with section 776(c) of the Act. As BIA, we applied the weighted-average margin found in the less than fair value (LTFV) investigation, because it is the highest rate ever determined for Heveafil. This is consistent with the Department's general application of partial BIA (see, *e.g.,* Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et. al,* 60 FR 10900, 10907 (February 28, 1995) (AFBs)).

For sales made from the inventory of the U.S. branch office, we based USP on ESP, in accordance with section 772(c) of the Act. In addition, we reclassified certain purchase price sales as ESP sales because we verified that the sales were canceled by the original purchaser after shipment and resold after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We revised the reported data based on our findings at verification. We made deductions, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, U.S. customs duty, harbor maintenance and merchandise processing fees, and inspection charges. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit and indirect selling expenses.

B. Rubberflex

We based purchase price on packed, CIF prices to the first unrelated purchaser in the United States. We made deductions from USP, where appropriate, for foreign inland freight, foreign brokerage and handling, containerization expenses, ocean freight, marine insurance, U.S. customs duties, harbor maintenance and merchandise processing fees, and U.S. inland freight expenses, in accordance with section 772(d)(2) of the Act. Rubberflex did not report certain movement charges, although the company reported that it incurred them on all purchase price transactions. Accordingly, we based the amount of the unspecified expenses on BIA. As BIA, we used the highest amount reported in the purchase price sales listing for each specific movement charge (see, *e.g.,* Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Administrative Review, 60 FR 48687 (September 20, 1995) and AFBs). We disregarded a rebate which was erroneously reported for one purchase price sale, because Rubberflex stated in its questionnaire response that the company did not grant any U.S. rebates during the POR.

For sales made from the inventory of the U.S. subsidiary, we based USP on ESP, in accordance with section 772(c) of the Act. We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, containerization expenses, ocean freight, marine insurance, U.S. customs duty, harbor maintenance and merchandise processing fees, and U.S. inland freight. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit and indirect selling expenses.

Rubberflex did not report complete data for certain ESP sales. Accordingly, we used BIA to determine these data, as follows. Where price and/or credit expense data was missing for sales of second quality merchandise, we used the average price and expense data reported for other second quality sales. Where the date of sale was missing and/or the control number was missing, we applied the weighted-average margin found in the LTFV investigation, because it is the highest rate ever determined for Rubberflex. This is consistent with the Department's general application of partial BIA (see, *e.g.,* AFBs).

Foreign Market Value

In order to determine whether the home market was viable during the POR, we compared the volume of each of the respondent's home market sales to the volume of its third country sales, in accordance with section 773(a)(1)(B) of the Act and 19 CFR 353.48. Based on this comparison, we determined that neither respondent had a viable home market during the POR. Consequently, we based FMV on third country sales.

We selected the appropriate third country markets for Heveafil and Rubberflex. Specifically, we chose, as the appropriate third country markets, Italy for Heveafil and Hong Kong for Rubberflex, in accordance with 19 CFR 353.49(b).

Because the Department disregarded third country sales below the cost of production (COP) for both Heveafil and Rubberflex in the original investigation (see Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia, 57 FR 38465 (August 25, 1992)), in accordance with our standard practice, there were reasonable grounds to believe or suspect that both Heveafil and Rubberflex had made third country sales at prices below COP in this review.

In accordance with section 773(b) of the Act, and longstanding administrative practice (see, *e.g.,* Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Korea, 56 FR 16306 (April 22, 1991) and Final Results of Administrative Review: Mechanical Transfer Presses from Japan, 59 FR 9958 (March 2, 1994)), if over ninety percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities. Where we found between ten and ninety percent of respondent's sales of a given product were at prices below the COP, and the below cost sales were made over an extended period of time, we disregarded only the below-cost sales. Where we found that more than ninety percent of a respondent's sales were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales for that product and calculated FMV based on constructed value (CV), in accordance with section 773(e) of the Act.

In order to determine whether third country prices were above the COP, we calculated the COP for each model based on the sum of the respondent's cost of materials, labor, other fabrication costs, and general expenses and packing. We calculated CV for each model based on the sum of the respondent's cost of manufacture (COM), plus general expenses, profit and U.S. packing. For general expenses, which includes selling and financial expenses (SG&A), we used the greater of the reported general expenses or the statutory minimum of ten percent of the COM. For profit, we used the greater of the weighted-average third country profit during the POR or the statutory minimum of eight percent of the COM and SG&A, in accordance with section 773(e)(B) of the Act.

For Heveafil, we made the following adjustments to the COP and CV data used in the preliminary results. We recomputed Heveafil's general and administrative (G&A) and interest expenses by adjusting the cost of goods sold figure used as the denominator for clerical errors (see comment 5 below). For further discussion of these

adjustments, see also the cost calculation memorandum from Stan Bowen, accountant in the Office of Accounting, to Christian Marsh, Director of the Office of Accounting, dated August 22, 1996.

For Rubberflex, we made the following adjustments to the reported COP and CV data. We recalculated G&A and interest expenses using data contained in Rubberflex's audited financial statements. For further discussion of these adjustments, see the cost calculation memorandum from Elizabeth Lofgren, accountant in the Office of Accounting, to Christian Marsh, Director of the Office of Accounting, dated April 30, 1996.

A. Heveafil

Where FMV was based on third country sales, as in the original investigation, we based FMV on CIF prices to unrelated Italian customers in comparable channels of trade as the U.S. customer. Specifically, FMV was based on direct sales from Malaysia to Italy for purchase price sales comparisons, and on sales from the inventory of Heveafil's Italian branch office for ESP sales comparisons, in accordance with section 773(a)(1)(B) of the Act. We made adjustments to Heveafil's reported sales data based on our findings at verification. We made no adjustment to FMV for credits issued by the Italian branch office based on our finding at verification that they were incorrectly reported (see the Italian Branch's sales verification report, dated August 30, 1995).

For third country price-to-purchase price comparisons, we made deductions, where appropriate, for rebates. We also deducted post-sale home market movement charges from FMV under the circumstance of sale provision of section 773(a)(4)(B) of the Act and 19 CFR 353.56. This adjustment included Malaysian foreign inland freight, brokerage and handling, ocean freight, marine insurance, Italian brokerage and handling, and Italian inland freight to Heveafil's unrelated customers in Italy, where appropriate. Pursuant to 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses.

For third country price-to-ESP comparisons, where appropriate, we made deductions for rebates and credit expenses. We deducted the third country market indirect selling expenses, including inventory carrying costs, pre-sale freight (*i.e.*, foreign inland freight, brokerage and handling, ocean freight, marine insurance, Italian brokerage and handling, and Italian freight to Heveafil's warehouse) and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all price-to-price comparisons, we deducted third country packing costs and added U.S. packing costs, in accordance with section773(a)(1) of the Act. At verification, we found that Heveafil had incorrectly reported its third country and U.S. packing material expenses. Therefore, we based the adjustment for packing materials on BIA. As BIA, we used the lowest packing material expense reported for any Italian sale and the highest packing expense reported for any U.S. sale (*see* Concurrence Memorandum to Barbara R. Stafford from Team, dated April 30, 1996). In addition, where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act and 19 CFR 353.57.

For CV-to-purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses in accordance with section 773(a)(4)(B) and 19 CFR 353.56.

For CV-to-ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted the third country market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all CV-to-price comparisons, we added U.S. packing expenses as specified above, in accordance with section 773(e)(1)(C) of the Act.

B. Rubberflex

Where FMV was based on third country sales, as in the original investigation, we based FMV on CIF prices to unrelated Hong Kong customers in comparable channels of trade as the U.S. customer. Specifically, FMV was based on direct sales from Malaysia to Hong Kong for purchase price sales comparisons, and on sales from the inventory of Rubberflex's Hong Kong subsidiary for ESP sales comparisons.

For third country price-to-purchase price comparisons, we made deductions, where appropriate, for rebates. We also deducted post-sale home market movement charges from FMV under the circumstance of sale provision of 19 CFR 353.56. This adjustment included Malaysian foreign inland freight, brokerage and handling charges, containerization, ocean freight, and marine insurance. Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we also made circumstance of sale adjustments, where appropriate, for differences in credit expenses.

For third country price-to-ESP comparisons, we made deductions for rebates, where appropriate. We also made deductions for credit expenses.

We deducted the third country market indirect selling expenses, including inventory carrying costs, bank charges, pre-sale freight expenses (*i.e.*, foreign inland freight, brokerage and handling charges, containerization, ocean freight, marine insurance, Hong Kong duty and brokerage expenses, and freight from the port in Hong Kong to Rubberflex's warehouse), and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Regarding Hong Kong duties, Rubberflex reported a combined amount for document declaration fees, terminal handling charges, and bank charges. Because the Department's practice is to treat bank charges as a selling expense (rather than a movement charge), we reclassified bank charges as selling expenses and recalculated Hong Kong duties accordingly (see, e.g., Final Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods from Korea, 60 FR 33561, 33562 (June 28, 1995) and Final Determination of Sales at Less Than Fair Value; Dynamic Random Access Memory Semiconductors of One Megabit and Above from Korea, 58 FR 15467, 15467–70 (March 23, 1993)).

For all price-to-price comparisons, we deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. In addition, where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act and 19 CFR 353.57.

For CV-to-purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses, in accordance with section 773(a)(4)(B) of the Act and 19 CFR 353.56.

For CV-to-ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted third country market indirect selling expenses, including inventory carrying costs, bank charges, and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all CV-to-price comparisons, we added U.S. packing expenses, in

accordance with section 773(e)(1)(C) of the Act.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from both petitioner and respondents. We received rebuttal comments from Rubberflex only.

Comment 1: Treatment of Countervailing Duties

Respondents assert that, where FMV is based on CV, the Department should adjust USP for certain countervailing duties paid, in accordance with section 772(d)(1)(D) of the Act. Specifically, respondents assert that the Department should increase USP by the amount of the countervailing duties attributable to all income tax holidays and tax abatement programs.

According to respondents, the Department's assumption that export subsidies are reflected in a company's production costs is not correct when the benefit conferred is in the form of income tax holidays or abatements, because income taxes are not an element of COP. Therefore, respondents maintain, it is impossible for any benefit relating to income taxes to be reflected in either COP or CV, although these benefits are included in USP.

DOC Position

In this case, each of the countervailable programs identified by respondents (*i.e.*, Pioneer Status, Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales, Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports, Industrial Building Allowance, and Double Deduction for Export Promotion Expenses) were classified as export subsidies in the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread from Malaysia, 57 FR 38472 (August 25, 1992). However, we disagree with respondents that U.S. price should be increased by the amount of the countervailing duties imposed in connection with these subsidies in the first and second administrative reviews of the countervailing duty order on extruded rubber thread from Malaysia.

In accordance with section 772(d)(1)(D) of the Act, we normally increase U.S. price by ''the amount of any countervailing duty imposed on the [subject] merchandise to offset an export subsidy.'' The purpose of this adjustment is to avoid double-counting when compensating for the same situation of dumping or export subsidization (*i.e.*, once in the form of antidumping duties and once in the form of countervailing duties). For example, we assume that U.S. price reflects the benefit of export subsidies (*i.e.*, it is lower than it would be were there no subsidies). However, FMV normally does not reflect the same benefit, because FMV normally is not based on an export price, but instead on the sales price in the home market. Under this scenario, all other factors being equal, comparison of U.S. price to FMV would yield a dumping margin equal to the export subsidy. Therefore, if no upward adjustment were made to U.S. price to offset the subsidy, the benefit from the subsidy would be double-counted.

On the other hand, we do not increase U.S. price under § 772(d)(1)(D) of the Act when, like the U.S. price, the foreign market value already reflects the benefit of the export subsidies. See, *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from India, 60 FR 10545, 10550 (February 27, 1996). As in the Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia, 57 FR 46150 (October 7, 1992), foreign market value for both Rubberflex and Heveafil was based on third country sales and CV. With respect to exports to third country markets, respondents receive the same benefits from export subsidies as with exports to the United States. Therefore, the benefits from the export subsidies were reflected in both the U.S. price and the foreign market value and no adjustment was made to U.S. price. For those sales where CV was used as the basis for foreign market value, we used third country SG&A expenses, as well as third country profit in determining CV for both companies. Since third country SG&A and profit reflect the benefits from the export subsidies, we have similarly made no adjustment to U.S. price for the benefits from export subsidies.

Comment 2: Assessment of Antidumping Duties

Respondents assert that, in accordance with section 737(a) of the Act, the Department should instruct Customs to ''cap'' their antidumping duty liability for entries made between the time of the preliminary determination in the less-than-fair-value investigation and the final injury determination by the International Trade Commission (ITC) at the amount collected as security. Respondents assert that the cap should apply regardless of whether security was provided in the form of cash or a bond. In support of this position, respondents rely on *Daewoo Electronics Co., Ltd.* v. *United States*, 6 F.3d 1511 (Fed. Cir. 1993).

DOC Position

We agree with respondents that Heveafil's and Rubberflex's antidumping duty liability for entries made between the Department's preliminary determination and the ITC's final injury determination in this case should be ''capped'' at the amount collected as security for antidumping duties, and the Department will instruct the U.S. Customs Service accordingly. Section 737(a)(1) of the Act [19 U.S.C. 1673f(a)(1)] provides:

> (a) Deposit of Estimated Antidumping Duties Under § 733(d)(2).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733(d)(2) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—
>
> (1) disregarded, to the extent that the cash deposit collected is lower than the duty under the order
>
> * * * * *

Section 737(a)(1) of the Act, known as the ''provisional measures deposit cap,'' operates to cap (*i.e.*, limit) the assessment rate at the amount provided as security for estimated antidumping duty liability at the time the subject merchandise is entered into U.S. commerce. See, *e.g.*, *AOC International, Inc.* v. *United States*, 721 F. Supp. 314, 322–323 (CIT 1989) (''*AOC International*''), *Daewoo Electronics* v. *United States*, 6 F.3d 1511, 1520–22 (Fed. Cir. 1993) (''*Daewoo*''), and *Torrington Co.* v. *United States*, 903 F. Supp. 79, 88 (CIT 1995).

Moreover, the Department's regulation implementing section 737(a)(1) of the Act makes clear that the provisional measures deposit cap applies whether the security for antidumping duty liability is provided by cash deposit or bond. The relevant regulation, 19 CFR section 353.23, provides in relevant part:

> This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination. If the cash deposit *or bond* required under the Secretary's affirmative preliminary determination or affirmative final determination is different from the dumping margin * * *, the Secretary will instruct the Customs Service to disregard the

difference to the extent that the cash deposit *or bond* is less than the dumping margin * * *. (emphasis supplied)

Thus, the provisional measures deposit cap that limits the amount of assessment at the amount collected as security on the subject merchandise as entered before the ITC's final injury determination applies whether that security is provided in the form of a cash deposit or a bond. The courts have repeatedly upheld the Department's practice in this regard. *See, e.g., Daewoo,* 6 F.3d at 1521 and *AOC International,* 721 F. Supp at 723.

In the instant case, there are four provisional measures deposit caps. From the period of April 2, 1992 to April 28, 1992, the amount of security required for both respondents' entries was zero. See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Extruded Rubber Thread From Malaysia, 64 FR 12287, 12290 (April 2, 1992) (''Preliminary Determination''). From the period of April 28, 1992 to August 25, 1992, the amount of security required was 2.62 percent and 2.22 percent for Heveafil and Rubberflex, respectively. Id. From the period of August 25, 1992 to October 7, 1992, the amount of security required was 10.68 percent and 22.00 percent for Heveafil and Rubberflex, respectively. See Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia 57 FR 38465 (August 25, 1992). From the period of October 7, 1992 to October 15, 1992 (*i.e.*, the date of publication of the International Trade Commission's final determination), the amount of security required was 10.68 percent and 20.38 percent for Heveafil and Rubberflex, respectively. See Final Determination: Extruded Rubber Thread from Malaysia 57 FR 47351 (October 15, 1992).

Accordingly, we will instruct the U.S. Customs Service to cap respondents' dumping liability on the entries in question at the amount collected as security.

Comment 3: Assessment of Antidumping Duties More Than 120 Days After the Department's Preliminary Determination and Before Publication of the ITC's Final Injury Determination

Relying on Article 10.3 of the Antidumping Code of the General Agreement on Tariffs and Trade (GATT), respondents assert that the Department does not have the authority in an antidumping investigation to impose provisional measures for more than 120 days after the Department's preliminary determination and, therefore, does not have the authority to assess antidumping duties on entries made on August 1, 1992, through September 26, 1992. Accordingly, respondents argue that these entries should be liquidated without regard to antidumping duties.

DOC Position

We disagree with respondents that no provisional measures could be imposed, and no dumping duties can be assessed, on entries made during the period August 1, 1992, through September 26, 1992.

In the Preliminary Determination, we stated:

''Effective April 28, 1992, however, the Department will terminate the suspension of liquidation and the deposit of estimated countervailing duties in the countervailing duty investigation, because, in accordance with § 705 of the Act, and article 5, paragraph 3 of the Subsidies Code, provisional measures may remain in effect no longer than 120 days. Consequently, the adjustment to the United States price for countervailing duties imposed will not be made for entries made on or after this date. Therefore, by virtue of this antidumping determination, on April 28, 1992, we will also direct the U.S. Customs Service to suspend liquidation of all entries of extruded rubber thread from Malaysia, as defined in the ''Scope of the Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after April 28, 1992. In addition, the U.S. Customs Service shall require a cash deposit or posting of a bond on these entries equal to the estimated preliminary dumping margins shown above. This suspension of liquidation, when imposed, will remain in effect until further notice.'' Preliminary Determination, 60 FR at 11290.

Article 10.3 of the GATT Antidumping Code specifically states that the imposition of provisional measures for antidumping duty liability purposes may extend beyond four months (*i.e.,* 120 days) to six months (*i.e.,* 180 days). Article 5.3 of the GATT Subsidies Code (unlike Article 10.3 of the GATT Antidumping Code) does not contain a similar provision for the extension of provisional measures. Therefore, in a countervailing duty case, we do not impose provisional measures beyond the 120 days, as stated in the Preliminary Determination. Thus, in the Preliminary Determination, the Department did not terminate the imposition of provisional measures for antidumping liability purposes after 120 days as it did with respect to the imposition of provisional measures for countervailing duty liability. Indeed, the Preliminary Determination states that ''[t]his [AD] suspension of liquidation * * * will remain in effect until further notice.'' Preliminary Determination, 60 FR at 11290. The Department's differing treatment of provisional measures in the antidumping and countervailing duty cases is consistent with our GATT obligations.

Furthermore, there is no requirement in the statute that there be a request for an extension of provisional measures. In fact, it is the Department's practice (see, *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996)) to infer a request for the extension of the provisional measures period when, as in this case, exporters request an extension of the final determination pursuant to § 735(a)(2) of the Act. This practice is consistent with our new statute, which expressly incorporates the GATT provisions. Therefore, because provisional measures for antidumping duty liability purposes were properly imposed on entries made beyond the 120 days, the Department will instruct the U.S. Customs Service to assess antidumping liability on entries made during the period August 1, 1992, through September 26, 1992.

Comment 4: Contemporaneous Product Comparisons

According to Heveafil, the concordance program used in calculating the preliminary results does not limit the sales chosen as the ''most similar'' merchandise to U.S. sales to contemporaneous third-country sales. Heveafil argues that the Department should revise its product concordance programs to ensure that matches are made using only contemporaneous sales.

DOC Position

We agree and have revised our product concordances for Heveafil accordingly. Moreover, although this issue was not raised with respect to Rubberflex, it also applies to the comparisons selected for this respondent. Consequently, we have also revised the product concordances for Rubberflex to take contemporaneity into account in selecting the most similar merchandise.

Comment 5: Alleged Clerical Errors in the Margin Calculations for Heveafil

Heveafil argues that the Department made the following clerical errors in the calculation of its margin for purposes of the preliminary results: (1) The Department failed to adjust third country price for packing material expenses; (2) The Department deducted from USP the per kilogram cost of certain movement expenses, rather than the per pound cost; (3) the Department did not include certain sales reclassified as ESP sales in its ESP concordance; (4)

the Department double-counted effluent treatment costs in the calculation of COP and CV; and (5) G&A and financial expenses included in COP and CV were overstated because Heveafil's cost of sales stated on the income statement did not include fixed overhead. Heveafil requests that the Department correct these errors for purposes of the final results.

DOC Position

We agree with Heveafil on all items noted above and have made the appropriate corrections for purposes of the final results.

Comment 6: Consolidated G&A and Financial Expenses

Heveafil argues that the Department should not include any costs of its holding company, Perbadanan Nasional Berhad (PNB), in calculating G&A and financial expenses for purposes of computing COP and CV. Heveafil asserts that the Department does not collapse subsidiaries with entities which do nothing more than hold stock in the subsidiary. In support of this contention, Heveafil cites Silicon Metal from Argentina: Final Results of Antidumping Administrative Review (58 FR 65336, Dec. 14, 1993) (Silicon Metal). According to Heveafil, because PNB is merely a holding company, it is not actively involved in running Heveafil's business.

Moreover, regarding G&A, Heveafil contends that any management services provided by PNB (*e.g.*, participation on the Board of Directors) are paid for by Heveafil and, thus, are already reflected in the reported G&A expenses. Finally, Heveafil asserts that any internal audits performed by PNB are not for the benefit of Heveafil, but rather for PNB's shareholders. Therefore, Heveafil contends that these costs are not part of the cost of producing rubber thread.

DOC Position

We disagree with Heveafil that a portion of PNB's G&A and interest expenses should not be allocated to Heveafil. For G&A, it is the Department's long-standing practice to require the respondent to report not only its own G&A expenses, but also a proportional share of an affiliated party's G&A expense incurred on the reporting entity's behalf. (See, *e.g.*, Final Determination of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom, (60 FR 10558, 10561, February 27, 1995); Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-length Carbon Steel Plate from Canada, (58 FR 37082, 37114, July 9, 1993); and, Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela, (58 FR 27524, May 10, 1993). Furthermore, the transactions that did occur between PNB and Heveafil clearly demonstrated that PNB's involvement was more than that of a passive investor. For example, PNB accountants performed internal audits on Heveafil's accounting records which resulted in changes to Heveafil's internal accounting controls and operating procedures. Further, Heveafil's reliance on Silicon Metal is misplaced because it is contrary to the facts of the instant review. In that determination, the Department found that the company in question was privately owned by seven Argentine citizens and that no corporate transactions occurred between the parties. As for Heveafil's concern that our G&A adjustment may double count some reimbursed general expenses (*e.g.*, Board of Director fees), we corrected our calculation for the final results to avoid double counting the reimbursed G&A expenses.

It is also the Department's long-standing practice to calculate interest expense for COP/CV purposes based on the borrowing costs incurred by the consolidated group. (See, *e.g.*, Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy, (60 FR 31981, 31990, June 19, 1995).) This methodology, which has been upheld by the CIT in *Camargo Correa Metals, S.A.* v. *U.S.*, 17 CIT 897, Slip Op. 93–163, at 12–13 (CIT 1993), is based on the fact that the consolidated group's controlling entity has the power to determine the capital structure of each member of the group. In this case, the controlling entity has such power because it owns a substantial majority of Heveafil.

Comment 7: Inclusion of a Write-Off of Idle Equipment in Heveafil's G&A

Heveafil argues that the Department inappropriately increased its G&A expenses by including an extraordinary loss related to idle plant equipment. Heveafil maintains that, while this loss appeared in its draft financial statements, it was removed from the final financial statements issued by Heveafil's independent auditors. Heveafil further maintains that it provided copies of the final audited statements at verification, although these copies were not taken as verification exhibits. Heveafil notes, however, that the working trial balance associated with the final financial statement is included in the record of this administrative review as cost verification exhibit three, which demonstrates that the assets are still recorded on the books.

DOC Position

We disagree with Heveafil that the write-off of idle manufacturing equipment should not be included in the COP and CV. In 1993, company officials deemed this manufacturing equipment worthless. Heveafil's write-off is documented in footnote six of Filmax Sendirian Berhad's (a subsidiary of Heveafil's) 1993 audited financial statements provided as a supplemental section D exhibit. These financial statements are signed and dated by the company's independent auditors, they contain signed declarations of accuracy by the Chairman and Director of the company, and they contain the official dated regulatory seal of the Malaysian Commissioner for Oaths. As for Heveafil's concern that the 1993 working trial balance taken as cost verification exhibit three shows that it still owns these assets, this does not change the fact that this manufacturing equipment was considered worthless, unusable, and no longer depreciable by company officials during the POR.

There is nothing unusual about a company's writing off manufacturing plants or equipment. Accordingly, we do not consider write-offs to be a type of extraordinary expense that we exclude from the cost of producing subject merchandise. The Department has in the past included similar equipment write-offs in the calculation of COP and CV. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy, 60 FR 31981, 31990 (June 19, 1995); Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Germany, 61 FR 13834, 13836 (March 28, 1996); and Final Results of Antidumping Duty Administrative Review: High-Tenacity Rayon Filament Yarn from Germany, 59 FR 15897, 15899 (March 28, 1995).)

Finally, although Heveafil attempted to defer this write-off based on the contents of revised 1993 audited financial statements, these revised financial statements were properly rejected and returned to the respondent because they constituted new factual information that was untimely submitted within the meaning of 19 CFR 353.31(a)(3). *See* Letter from Louis Apple, Acting Office Director, Group II,

Office of AD/CVD Enforcement, to White & Case, dated August 21, 1996.

Comment 8: Alleged Clerical Errors in the Margin Calculations for Rubberflex

Petitioner alleges that the Department made two clerical errors in the calculation of Rubberflex's margin for purposes of the preliminary results. First, petitioner claims that the Department did not deduct certain movement expenses denominated in Hong Kong dollars (*e.g.,* warehousing in Hong Kong and Hong Kong import duties) from the net price used in the cost test. In addition, petitioner maintains that the Department converted CV into pounds by dividing by 2.2046 twice.

Rubberflex disagrees. Regarding the question of movement expenses, Rubberflex notes that (1) it did not incur the types of expenses cited by petitioner on its purchase price sales, and (2) the Department properly deducted all movement expenses on its ESP sales. Regarding the calculation of CV, Rubberflex states that petitioner clearly misread the computer programs used in the preliminary results. Specifically, Rubberflex notes that petitioner's allegation is based on the computer language for the calculation of FMV for price-to-price comparisons, rather than the CV calculation language.

DOC Position

We agree with Rubberflex. Upon review of our computer programs, we find that the movement expenses referenced by petitioner were appropriately deducted from net price for ESP sales (see lines 1184, 1186, and 1190 of the computer program created for purposes of the preliminary results). Regarding purchase price transactions, we note that Rubberflex did not incur the expenses referenced in petitioner's brief. Because these expenses did not exist, they were not deducted from net price.

Regarding CV, we also agree with Rubberflex that we properly converted the per kilogram costs into pounds (see lines 1979 and 2008 in the ESP preliminary program and lines 1679 and 1704 in the purchase price preliminary program). Accordingly, we have made no changes to the movement expense or CV calculations performed for Rubberflex for purposes of the final results.

Comment 9: Matching Criteria for Diaper Grade Thread

Petitioner claims that the Department placed an undue importance on the matching criterion of color when matching sales of diaper grade thread. Specifically, petitioner maintains that diaper grade thread is differentiated from other types of rubber thread by color only. Therefore, because Rubberflex's control numbers included a designation for grade of thread (*i.e.,* diaper- vs. non-diaper grade), the Department counted color twice in its matching methodology.

Rubberflex maintains that the Department's matching methodology was not only appropriate, but it was also based on the characteristics identified in the questionnaire. Moreover, Rubberflex asserts that the company's differentiation of diaper grade in its control numbers had no bearing on the results of the model matching because control numbers were not used in determining the most similar merchandise.

DOC Position

We agree with Rubberflex. All matches involving non-identical products were based solely on the model matching criteria identified in the questionnaire and not on the control numbers. As such, contrary to petitioner's assertion, we made no distinction between diaper and non-diaper grades when making non-identical comparisons. Because neither petitioner nor respondents have contested the matching hierarchy established at the beginning of the review, nor has any interested party provided valid reasons to depart from this hierarchy, we have continued to use it for purposes of the final results.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period April 2, 1992, through September 30, 1993:

Manufacturer/ exporter	Review period	Margin (percent)
Heveafil	4/2/92–9/30/93 ...	10.65
Rubberflex	4/2/92–9/30/93 ...	1.88

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of subject merchandise from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by § 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, an earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the LTFV investigation, whichever is the most recent; and, (4) the cash deposit rate for all other manufacturers or exporters will be 15.16 percent, the ''all others'' rate established in the original LTFV investigation by the Department.

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

This notice also 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 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the 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: October 16, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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