DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1324 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51907) the preliminary results of the administrative review (*Preliminary Results*) of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. *Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

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

Scope of this Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1994, through July 31, 1995. This review covers entries of certain cut-to-length carbon steel plate by AG der Dillinger Hüttenwerke (Dillinger).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Dillinger) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company a Unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company). At the request of petitioners, a hearing was held on November 22, 1996. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Comment 1

The petitioners argue that the Department should have characterized Dillinger's U.S. sales as constructed export price (CEP) transactions rather than export price transactions (EP). Petitioners argue that despite the Department's prior characterization of Dillinger's sales as purchase price, the equivalent of EP sales under the amended statute, based on substantial new information on the record of this proceeding, these sales should be classified as CEP.

Petitioners claim first that Francosteel physically warehoused subject merchandise, citing references in Francosteel's financial statement to warehouse expenses. Petitioners note that prior to verification, they had requested that the Department tie references in Francosteel's financial statements regarding inventory at warehouses and processors in the U.S. to specific ledger entries. Petitioners argue that this was not done. Petitioners also argue that in the first administrative review the Department considered only physical inventory, effectively discounting other types of inventory such as financial. Petitioners claim that a physical inventory test limits CEP sales only to those made after the date of importation and is inconsistent with *PQ Corp.* v. *United States*, 652 F. Supp. 724, 731 (CIT 1987).

Petitioners state that each U.S. sale involves two shipments: one from Germany to the United States and the other from Francosteel to the unaffiliated U.S. customer. Petitioners allege that while subject merchandise entered the United States on July 29, 1995, it was not shipped to the unaffiliated customer until August 2, 1995, which they state is evidence that the steel was warehoused by Francosteel. With respect to financial inventory, petitioners note several references in Francosteel's financial statements. Petitioners argue that financial inventory is relevant to the Department's CEP test as it is indicative

of the affiliated reseller's role in the U.S. sales transactions.

Petitioners next argue that Francosteel negotiates the price of subject merchandise sold to unaffiliated customers. Petitioners cite the Department's June 13, 1996, verification report which indicates that Francosteel ultimately sets the price the unaffiliated U.S. customer is charged, which petitioners argue is proof that Dillinger's sales are CEP. Petitioners state that their view is consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 38166, 38176 (July 23, 1996). Petitioners also distinguish the present review from *Independent Radionic Workers of America v. United States,* Slip op. 95–45 (CIT Mar. 15, 1995), in which petitioners state the Court of International Trade (CIT) held that the affiliate's substantial selling functions were not necessarily inconsistent with a finding of purchase price treatment. Petitioners contend that *Independent Radionic Workers* did not involve the power to negotiate U.S. price. Petitioners argue that Dillinger's approval of the price negotiated by Francosteel is completely irrelevant.

Petitioners argue that Francosteel performs numerous other functions, which, with the role of price setting, petitioners claim go beyond mere document processor or communications link. Petitioners argue that among other functions, Francosteel takes title, purchases subject merchandise from Dillinger and resells it; represents itself as the seller of the subject merchandise to its U.S. customers; acts as importer of record; and finances the sale. Petitioners add that Francosteel frequently remits payment for merchandise to Dillinger before Francosteel receives payment from its U.S. customers. They state that certain documentation (*e.g.,* pertaining to total U.S. sales value) is only available at Francosteel and that more sales activity takes place in the United States than in Germany with respect to U.S. sales.

Dillinger responds that the Department correctly characterized its single U.S. sale as export price. The sale was made before the date of importation and Dillinger claims that direct shipment is the customary commercial channel for sales of plate to the U.S. customer. Dillinger disputes petitioners' claim that there was a four-day lapse of time between entry and shipment to the customer and that this alleged lapse is evidence of warehousing. Dillinger states that customs entry was made on the day the vessel entered the waters of the Port of Houston, but that actual docking occurred several days later. Dillinger notes that the terms of sale were FOB on the customer's trucks, and that the merchandise was directly unloaded from the vessel onto the customer's truck. Respondent states that the Department verified that Francosteel's warehousing costs were for non-subject merchandise. Respondent also urges the Department to reject petitioners' ''new theory of 'financial inventory' '' as without support in the statute or the Department's regulations.

With respect to the negotiation of price, respondent quotes the Department's verification report which states that ''Francosteel cannot confirm an order, including price, to the customer before Dillinger has approved the order'' and ''Dillinger makes all decisions with regard to price and quantities offered, specifications and delivery times * * *. Dillinger always approves the price for all sales.'' Thus, consistent with Francosteel's alleged role as a mere document processor and communications link, according to respondent, even if Francosteel thinks it can get better than Dillinger's minimum price guideline, the final price must still be approved by Dillinger. In response to a question at the hearing, Dillinger also argued that there is no evidence in this case that Francosteel got or attempted to get a price better than Dillinger's minimum price guideline for the sale subject to this review. *See* November 22, 1996, hearing transcript at 38.

Department's Position

We agree with petitioners and have determined that respondent's single U.S. sale should be characterized as a CEP rather than an EP sale. This determination reverses that reached in the preliminary results of review. It also differs from the determination reached in the previous final results of review. *See Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review,* 61 FR 13834, 13843 (March 28, 1996) (*Dillinger First Review*). However, we have reexamined the evidence on the record in this review and, for the following reasons, have determined that it is more appropriate to consider this a CEP sale.

Whenever sales are made prior to importation through a related sales agent in the United States, the Department typically determines whether to characterize the sales as EP based upon the following criteria: (1) Whether the merchandise was shipped directly to the unrelated buyer, without being introduced into the related selling agent's inventory; (2) whether this procedure is the customary sales channel between the parties; and (3) whether the related selling agent located in the United States acts only as a processor of documentation and a communication link between the foreign producer and the unrelated buyer. *See, e.g., Newspaper Printing Presses From Germany,* 61 FR at 38175; *Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18551 (April 26, 1996). This test has been approved by the CIT. *Independent Radionic Workers,* Slip Op. 95–45 at 2–3; *PQ Corp.,* 652 F. Supp. at 733–35.

Applying the first two criteria to the present review, we agree with respondent that the merchandise was shipped directly to the unrelated U.S. customer without being introduced into the inventory of Francosteel, Dillinger's related U.S. selling agent. The Department verified that the terms of sale were FOB on the customer's trucks, and that the merchandise was directly unloaded from the vessel onto the customer's trucks. In addition, FOB shipment to the customer's trucks, without Francosteel warehousing the subject merchandise, is the customary channel of distribution. The Department also verified that the warehousing costs which Francosteel did incur were for non-subject merchandise. There is no evidence indicating that the subject merchandise was warehoused as well.

Concerning the third criterion, however, the Department has determined that Francosteel did act as more than a processor of sales documents and a communications link between the unrelated U.S. customer and Dillinger, the producer in Germany. We find that Francosteel played a major role in negotiating and bringing about the sale, from the bidding stage through the final contract. *See Newspaper Printing Presses From Germany,* 61 FR at 38176. Pursuant to respondent's general practice, customers in the United States either contact Francosteel or Francosteel contacts them. The Department verified that Dillinger does not get involved in the sale until after Francosteel makes the initial arrangements. Customers place purchase orders with Francosteel. Prior to sending an order to the mill, Francosteel does a credit check on the customer. Moreover, even though Dillinger sets the minimum purchase price after considering the order information it receives from Francosteel, Francosteel negotiates the sale with the customer with an aim to obtaining the best price possible. *U.S. Sales*

Verification Report, June 13, 1996, at 4–5 (*U.S. Verif. Rep.*). Francosteel then invoices the sale, takes title to the merchandise, and acts as importer of record.

We recognize that, despite Francosteel's involvement in the sales process, ''Dillinger always approves the price for all sales,'' as the Department found at verification. *Dillinger Sales Verification Report,* June 12, 1996, at 4–5 (*Germany Verif. Rep.*). We consider Dillinger's role in the sales process in the United States to be minimal, however. Francosteel essentially negotiates all sales in accordance with Dillinger's limited guidelines and the sales take place in the United States, not in Germany. In the first administrative review, the Department's determination that Francosteel acted merely as a processor of sales-related documentation was based mainly upon the finding that Francosteel lacked ''the flexibility to set the price of the steel.'' *Dillinger First Review* at 13843; *see also Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rod From France,* 58 FR 68865, 68869 (1993) (finding that U.S. affiliate participating in negotiations lacked flexibility to set price). We have determined that this was not the case during the present review.

We agree with petitioners that this case is distinguishable from the situation in *Independent Radionic Workers.* In that case, the CIT upheld the Department's determination that the sales in question were purchase price sales (what are now export price sales) despite the fact that the U.S. subsidiary ''processed purchase orders, performed invoicing, collected payments, arranged U.S. transportation and was the importer of record.'' Slip Op. 95–45 at 3. We consider Francosteel's extensive involvement in negotiating respondent's U.S. sale during this review, along with Francosteel's other sales activities, to warrant classifying this sale as CEP. This review is also distinguishable from this issue in *E.I. DuPont de Nemours & Co.* v. *United States,* 841 F. Supp. 1237 (CIT 1993). In that case, in upholding the Department's determination that the sales in question were purchase price, the CIT found that the foreign producer, not the U.S. affiliate, ''negotiated price and basic sales terms directly with each U.S. customer for each U.S. sale.'' *Id.* at 1249. The related affiliate lacked the authority to set the U.S. customer's price. *Id.* Francosteel's sales role was much more significant.

For the foregoing reasons, we have revised the determination in the preliminary results and have recharacterized respondent's U.S. sale as CEP.

Comment 2

Petitioners claim that the Department must apply partial facts available to all theoretical-to-actual weight conversion factors reported by Dillinger for its home-market sales, because of what petitioners consider to be significant discrepancies discovered by the Department. Petitioners note that weight conversion factors were used in the calculation of multiple variables, and have an impact throughout the Department's calculations. Despite these significant and persistent irregularities with the data, in petitioners' words, the Department merely corrected certain specific conversion factors for the preliminary results. Petitioners argue that the Department should apply, as partial facts available, the lowest non-aberrant actual-to-theoretical weight conversion factor reported by Dillinger. Petitioners argue that in *Gray Portland Cement and Clinker from Mexico: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51676, 51677 (October 3, 1996), the respondent inappropriately included long-term loans in its interest rate calculation and the Department used facts available and relied upon a properly reported interest rate for one of respondents' affiliates. Similarly, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 25200, 25202 (May 20, 1996), petitioners allege that the Department used partial best information available (BIA) rather than rely upon or correct respondent's erroneous further processing cost data.

Respondent counters that the Department acted properly in correcting the theoretical-to-actual weight conversion factors in the preliminary results. Dillinger notes that with one exception all sales with the incorrectly reported conversion factors were of beveled plate and that the corrected information provided by respondent at verification was found to be correct by the Department. Respondent claims that when the Department examined sales with less extreme weight conversion factors only one error was noted, and that the Department should not use a sample of ''outlier sales'' to draw inferences about the entire database.

Department's Position

We agree with respondent. The mistakes found at verification were not significant, persistent irregularities, as claimed by petitioners. Unlike *Cement and Clinker* and *Tapered Roller Bearings,* the incorrect data in this instance related to a small and discrete group of observations and was readily correctable. Rather, as Dillinger explains, the mistakes found primarily related to a small and discrete group of home-market sales (sales of beveled plate). The Department verified the weight conversion factors of various other sales, including all sales that were potential matches to the U.S. sales, and found no discrepancies. Consequently, correcting the limited number of errors was appropriate.

Comment 3

Petitioners argue that Dillinger's reported cost data should be revised in light of the Department's findings at verification. Petitioners argue that Dillinger failed to include in its COP calculation 13th month adjustments concerning certain receivables written off for Dillinger and Rogesa (Dillinger's affiliated pig iron supplier). Petitioners state that in the first administrative review, the Department properly determined that receivables written off constitute bad debt expenses, and that the write-offs for Saarstahl AG (SAG) (Dillinger's former sister company) and its subsidiaries were included in the indirect selling expense portion of Dillinger's COP and CV data. *See Dillinger First Review,* 61 FR at 13836–37. Petitioners argue that the receivables written off in the present review involve the same parties and arose under the same circumstances as those that the Department included in COP and CV in the first review. Petitioners conclude that the Department should treat these receivables in the same manner in this review.

Respondent states that in its preliminary results the Department properly rejected the adjustments to cost data proposed by petitioners. Respondent claims that the expenses related to SAG's bankruptcy settlement are not related to subject merchandise. Respondent agrees with the Department's finding in the preliminary results that these amounts cannot be included in COP and CV.

Department's Position

The Department correctly did not include these expenses in its calculation of cost or CV in the preliminary results. Petitioners are correct that write-offs of receivables which are part of a bankruptcy settlement may be considered bad debt expenses, which the Department considers to be ordinary expenses. *See, e.g., Dillinger First Review,* 61 FR at 13836. Contrary to petitioners' characterization, however, the receivables in question did not relate to the sale or production of subject merchandise, unlike other receivables written off during the previous review. For a more detailed discussion of these receivables, see the Analysis Memorandum to the File, April 2, 1997, and the *Cost Verification Report,* June 25, 1996, at 9, 16–17 (*Cost Verif. Rep.*). The Department did not include amounts related to the same accrual during the previous review in the calculation of COP or CV. *See Dillinger First Review* at 13837.

Comment 4

Petitioners argue that Dillinger's reported cost data must be revised in light of the Department's findings at verification with respect to expenses related to the depreciation of Rogesa's blast furnace. Petitioners state that the Department's cost verification report indicates that only a portion of certain Rogesa 13th month adjustments, including an amount for depreciation of expenses for a blast furnace, was included in Dillinger's COP and CV calculations. Petitioners cite the final results of the first review, and note that the full amount of the expenses related to the blast furnace should be recognized in calculating Rogesa's COM. *See Dillinger First Review,* 61 FR at 13,836.

Dillinger responds that since half of Rogesa's blast furnace output is contractually devoted to the production of non-subject merchandise for another company, it would be an error to allocate all of Rogesa's depreciation over only Dillinger's share of Rogesa's output. Dillinger argues that the Department could include as a cost either: (1) All of Rogesa's depreciation divided by Rogesa's total production to arrive at a per ton figure, or (2) the pro rata share of Rogesa's depreciation corresponding to Dillinger's pro rata share of Rogesa's output.

Department's Position

Dillinger is correct that it would be an error for the Department to divide the total blast furnace depreciation by the tonnage of Rogesa's sales to Dillinger (the tonnage amount used in the respondent's calculation), as this would overstate Rogesa's cost per ton of output. To include total blast furnace depreciation, we would have to divide that amount by Rogesa's total output or multiply it by Dillinger's pro rata portion of Rogesa's output. Both of these approaches would result in a lower per unit cost than the methodology used by Dillinger in its submissions. We have made no further adjustments.

Comment 5

Petitioners argue that the Department should determine that Dillinger, through Francosteel, has absorbed AD duties on behalf of its U.S. customer. Petitioners note that even if the Department determines that it is not required to conduct an absorption inquiry during this review, it retains the discretion to do so and should. Petitioners argue that record evidence demonstrates that the costs of AD and CVD duties, including cash deposits, are being absorbed by the affiliated importer and are not being borne by the ultimate U.S. customer. Petitioners argue that confining absorption inquiries to the second and fourth reviews under the URAA will encourage respondents to manipulate the administrative review process to avoid duty absorption findings. For example, petitioners note that Dillinger claims that it did not have any imports during the 1995/1996 review period, precluding a duty absorption inquiry with respect to the second review under the URAA. Petitioners claim that limiting duty absorption inquiries to the second and fourth reviews will encourage petitioners to request administrative reviews simply for the purpose of obtaining a duty absorption determination, creating additional burdens on the Department, petitioners, and respondents. Petitioners contend that the statute was not intended to force petitioners into choosing between incurring additional costs by requesting a review, when they might not otherwise choose to do so, or giving up their right to an absorption determination. Petitioners argue that only minimal additional work would be required for the Department to conduct a duty absorption inquiry and that doing so under these circumstances would be an efficient use of resources.

Respondent supports the Department's decision not to conduct a duty absorption inquiry in this review and also notes that there is no evidence on the record to support a finding of duty absorption. Respondent argues that the test of duty absorption is not whether AD and CVD duties are being absorbed by the affiliated importer, but whether these duties have been absorbed by the foreign producer or exporter. Dillinger argues that, contrary to petitioners' assertions, there is no verified evidence on the record that demonstrates that Dillinger has absorbed the duties through Francosteel.

Department's Position

We disagree with petitioners. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order whether AD duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. As stated in the preliminary results, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, the Department will make a duty absorption determination, if requested, in any administrative review initiated in 1996 or 1998. *See Preliminary Results,* 61 FR at 51980. This policy is in accordance with the statute as well as the approach adopted in the Department's proposed regulations. *See* 61 FR 7308, 7366 (February 27, 1996). Contrary to petitioners' argument, this approach does not impose an unnecessary burden upon parties. If domestic interested parties believe duty absorption is taking place, it is reasonable for them to request a review, during the review periods specified, in which duty absorption can be properly considered.

Comment 6

Petitioners claim that AD and CVD duties have been reimbursed by Dillinger, and must be deducted from U.S. price under § 353.26(a) of the Department's regulations. Petitioners note that the Department discovered at verification that Dillinger established a financial provision with respect to AD and CVD duties. Petitioners reject Dillinger's explanation of this provision—that it exists because German law requires Dillinger to establish such a provision even if there is but a remote possibility of a liability. Petitioners state that Dillinger has no legal obligation to pay AD duties under U.S. law, as Francosteel is the importer of record and is liable for duties owed. Petitioners argue that the only explanation for Dillinger establishing such a provision is that Dillinger voluntarily has accepted this liability and has reimbursed Francosteel for the duties it has absorbed.

Petitioners allege that a comparison of Dillinger's and Francosteel's chart of accounts demonstrates that duties have

been reimbursed. Petitioners cite Dillinger's Section A response which indicates that it owed money to affiliated companies for ''taxes and duties.'' Petitioners claim that Dillinger had ''an agreement to reimburse antidumping duties'' with its affiliated party and also that ''inappropriate financial intermingling'' occurred, demonstrating that duties were in fact reimbursed under the Department's test in *Final Results of Administrative Review: Color Television Receivers From the Republic of Korea.* 61 FR 4408 (February 6, 1996). The petitioners also note that the above evidence further meets the test applied by the Court of International Trade in *Federal Mogul Corp.* v. *United States*, 918 F. Supp. 386, 394 (CIT 1996), which requires only the establishment of a link between intra corporate transfers and the reimbursement of antidumping duties. Petitioners cite *Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 48465, 48470–71 (September 13, 1996), in support of their argument that duties need not be assessed to make a finding of reimbursement. The petitioners note that the respondent in that case both agreed to reimburse duties to be assessed and has reimbursed for antidumping duty cash deposits made on entries during the POR.

Petitioners also argue that the Department should adjust U.S. price to reflect the full amount of duties reimbursed. Petitioners reference *Certain Corrosion-Resistant Carbon Steel Flat Products From Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18564 (April 26, 1996), in which, petitioners claim, the Department indicated that respondents were entitled to an upward adjustment to U.S. price for countervailing duties offsetting export subsidies. The petitioners argue that the statute requires the Department to increase constructed export price by the amount of ''any countervailing duty imposed on the subject merchandise * * * to offset an export subsidy''. Petitioners state that the deduction of estimated duties is not prohibited by *PQ Corp.*

Respondent argues that Dillinger has not reimbursed Francosteel for AD/CVD duties. Respondent notes that at verification officials at Dillinger denied there was any agreement by Dillinger to reimburse AD/CVD duties to Francosteel and that officials at Francosteel denied there was any agreement to have Dillinger reimburse Francosteel for AD duties (although there may be future discussions with Dillinger regarding CVD duties). Respondent claims that Dillinger's general ledger provision relates to fees and expenses that could be incurred in connection with the AD proceeding. Respondent further notes that the Department verified that payments against this provision in 1994 and 1995 were for legal, data collection, consulting and translation fees, and that there is no evidence on the record showing that the subsequent amounts provisioned in that accrual were of a different nature. Respondent denies that there was any inappropriate financial intermingling between Dillinger, Sollac, and Francosteel. Finally, respondent notes that since there is no evidence on the record of reimbursement of AD/CVD duties, petitioners' request that U.S. price be adjusted to reflect the full amount of reimbursed duties is moot.

Department's Position

We disagree with petitioners. Section 353.26 of the Department's regulations requires the Department to deduct from United States price (now EP or CEP) the amount of any antidumping duty paid, or reimbursed, by the producer or exporter, thereby increasing the amount of the duty ultimately collected. 19 CFR § 353.26(a) (1996); *see Proposed Regulations*, 61 FR at 7382 (§ 351.402(f)). The Department has interpreted this regulation as applying regardless of whether the importer is affiliated to the producer or exporter. *See Steel From Netherlands*, 61 FR at 48470; *Color Television Receivers From Korea*, 61 FR at 4410–11.

As the Department stated in *Color Television Receivers From Korea*, however, ''[t]his does not imply that foreign exporters automatically will be assumed to have reimbursed related U.S. importers for antidumping duties by virtue of the relationship between them.'' 61 FR at 4411. The regulation requires ''evidence beyond mere allegation that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer, or reimbursed the U.S. importer for its payment of the antidumping duty.'' *Federal-Mogul Corp.*, 918 F. Supp. at 393 (*citing Torrington Co.* v. *United States*, 881 F. Supp. 622, 631 (CIT 1995)).

In the present review, contrary to petitioners' assertions, we found no evidence of inappropriate financial intermingling between Dillinger and Francosteel, or of either an agreement to reimburse AD duties or the actual reimbursement of AD duties between the two affiliated parties. The Department verified that ''Francosteel is responsible for paying all cash deposits.'' *U.S. Verif. Rep.* at 13. The Department also found ''no intention that there will be any reimbursement of AD duties in the future between Dillinger and Francosteel.'' *Id.* Petitioners are correct that Dillinger had established a general ledger provision in its accounting records with respect to antidumping and countervailing duties. Dillinger explained that the provision relates to fees and expenses incurred in connection with the AD proceeding, and that such a provision is required under German law ''if there is even a remote possibility of a liability.'' *Germany Verif. Rep.* at 22. We consider this a reasonable explanation. Moreover, we verified that all payments against the provision in 1994 and 1995 were for legal, data collection, consulting and translation fees. *Cost Verif. Rep.* at 10.

Because we have rejected petitioners' arguments regarding reimbursement, it is unnecessary to address petitioners' additional arguments regarding the application of § 353.26 of the regulations to the reimbursement of cash deposits.

For the foregoing reasons, we have not adjusted Dillinger's CEP as provided for under § 353.26.

Comment 7

Petitioners argue that regardless of the Department's determination with respect to reimbursement, the Department must deduct actual AD/CVD duties from the price used to establish EP or CEP. Petitioners claim that the plain language and structure of the statute mandate that the Department make such an adjustment. Specifically, petitioners state that the phrase ''any * * * United States import duties,'' as used in section 772(c)(2)(A) of the Act, includes AD and CVD duties, as such duties are plainly ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' *See* 19 U.S.C. 1677a(c)(2)(A).

Petitioners note that the relevant provisions of section 772(c)(2)(A) date from the Antidumping Act of 1921. Petitioners argue that the legislative history of the 1921 Act is silent as to the definition of ''any * * * United States import duties'' and that the drafter's failure to provide a definition either in the 1921 Act or its history indicates that Congress intended no meaning other than the ordinary one for this term. The petitioners also note that section 772(c)(1)(C) provides that the price used to derive EP or CEP shall be increased by the amount of any countervailing duty imposed to offset an export

subsidy. Petitioners argue that in the 1979 Trade Agreements Act, in addition to adding section 772(c)(1)(C), Congress added the phrase ''except as provided in paragraph 1(C)'' in section 1677a(c)(2)(A). This, the petitioners assert, demonstrates that Congress understood the subsection's reference to ''any * * * United States import duties'' as including AD and CVD duties; otherwise there would be no reason to exempt certain CVD duties from the provision.

While petitioners admit that the CIT has never explicitly held that the provision now included in section 772(c)(2)(A) covers CVD or AD duties, the Court has held so implicitly. Petitioners cite *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 872 (CIT 1993). This case, according to petitioners, requires the Department to deduct any actual import duties, *i.e.*, duties that can be accurately determined at the time the Department is calculating the current dumping margins. Petitioners add that *Federal-Mogul's* holding that the Department was correct not to deduct cash deposits of estimated AD or CVD duties was premised on the fact that estimated duties may not bear any relationship to the actual AD or CVD duties owed. Petitioners argue that the clear implication of the Court's reasoning is that actual duties are in fact ''United States import duties'' subject to section 772(c)(2)(A) and these duties should be deducted from U.S. price.

Petitioners also argue that the Department must deduct the full amount of CVD duties paid by Francosteel for those entries covered by the second administrative review of the CVD order as those duties are determinable.

Petitioners also argue that the Department must deduct the full amount of the ''actual'' antidumping duties that Francosteel will be responsible for upon liquidation of the entries of subject merchandise. Petitioners note that once the final results of review are issued, Dillinger's antidumping duties will be actually determined.

Petitioners state that the Department has erroneously refrained from deducting AD and CVD duties from U.S. price on the grounds that such a deduction will result in double-counting. *See Certain Corrosion-Resistant Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18,563–34 (April 26, 1996). Petitioners reject this argument, stating that the statute is not discretionary and that the Department's rationale is inconsistent with its treatment of other AD adjustments (*i.e.,* doubling antidumping margins to account for reimbursement in *Steel From the Netherlands*, 61 FR at 48470–71).

Respondent cites *Corrosion-Resistant Steel From Korea* and *Steel From the Netherlands* in response to petitioners' arguments with respect to treating AD/CVD duties as a cost. Respondent notes first that the issue is moot since there was no dumping margin. With respect to petitioners' argument regarding CVD cash deposits, respondent notes that the Department rejected a similar argument in *Corrosion-Resistant Steel From Korea* and should do so here for the same reasons.

Department's Position

It is the Department's longstanding position that AD and CVD duties are not a cost within the meaning of section 772(d). AD and CVD duties are unique. Unlike normal duties, which are an assessment against value, AD and CVD duties derive from the margin of dumping or the rate of subsidization found. Logically, AD and CVD duties cannot be part of the very calculation from which they are derived. This logical rationale for the Department's interpretation of the statute is consistent with prior decisions of the CIT. *See Federal-Mogul, supra*, 813 F. Supp. at 872 (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties'').

In particular, petitioners have no basis to draw a distinction between actual, assessed duties and cash deposits in this context, based upon *Federal Mogul.* Petitioners' reasoning is circular rather than logical. According to petitioners, in calculating the dumping margin, the Department must take into account the dumping margin. This cannot be what the CIT intended in *Federal Mogul.* Such double counting, *i.e.*, including the same unfair trade practice twice in a single calculation, is unjustifiable. Only in the limited circumstances regarding reimbursement, as provided for in § 353.26 of the Department's regulations, is it appropriate to deduct any amount of antidumping duties. Thus, petitioners' reliance upon *Steel From the Netherlands*, which applied only to reimbursement, is unwarranted as well.

Moreover, the treatment of AD and CVD duties (already paid or to be assessed) as a cost to be deducted from the export price is an issue that was arduously debated during passage of the URAA and ultimately rejected by Congress. *See* H.R. 2528, 103rd Cong., 1st Sess. (1993). Alternatively, Congress directed the Department to investigate, in certain circumstances, whether AD duties were being absorbed by affiliated U.S. importers. 19 U.S.C. 1675(a)(4). Thus, Congress put to rest the issue of AD and CVD duties as a cost. SAA at 885 (''The duty absorption inquiry would not affect the calculation of margins in administrative reviews. This new provision of the law is not intended to provide for the treatment of antidumping duties as a cost.''). *See also* H. Rep. No. 103–826(I), 103rd Cong., 2nd Sess. 60 (1994).

Final Results of Review

As a result of our review, we have determined that the following margin exists:

Manufacturer/ exporter	Time period	Margin (per-cent)
AG der Dillinger Hüttenwerke	8/1/94–7/31/95	3.00

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

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 36.00 percent. This is the ''all others'' rate from the LTFV investigation. *See Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under § 353.26 of the Department's regulations 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 a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with § 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9113 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–805]

Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. We have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (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 (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51898) the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden (58 FR 44162). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on November 19, 1996. We received written comments from SSAB Svenskt Stål AB (SSAB), respondent, and from petitioners: Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company. At the request of respondent and petitioners, a public hearing was held on November 19, 1996. We have now completed the administrative review in accordance with section 751(a) of the Act.

Scope of Review

Certain cut-to-length plate includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (POR) is August 1, 1994, through July 31, 1995.

Analysis of Comments Received

Comment 1—Reconciliation of Kalkyl System Costs

SSAB argues that it maintains two cost accounting systems, the normal cost accounting system and the kalkyl system. The company's normal cost accounting system is used for financial accounting purposes and records total costs for each major cost center. The kalkyl system, on the other hand, is a ''parallel system'' which is used to compute budgeted costs for each order item. Respondent contends that the kalkyl system is an alternate cost accounting system and not a ''sales estimating tool'' as stated in the Department's preliminary results. SSAB states that it uses the kalkyl system to ensure profitability of orders it accepts and that the kalkyl system has been used historically in the normal course of business. SSAB further notes that this system has been accepted by the Department in a past review. Respondent claims that the kalkyl system is the only costing system maintained by its Oxelösund facility (SSOX) that contains the cost detail required to meet the Department's demands for costs per control number (*i.e.*, per product).

SSAB argues that it notified the Department of the fact that the kalkyl system was not a formal part of SSOX's