DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: 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 cold-rolled carbon steel flat products from the Netherlands. 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: Helen Kramer 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) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51891) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, 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 Tariff Act of 1930, as amended (the Tariff 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 review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are 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 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review 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 from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. 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 cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

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 (Hoogovens) 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). A hearing was held on November 25, 1996, at which the parties presented their arguments.

Comment 1

Respondent argues that the Department should not have applied the reimbursement regulation, 19 CFR 353.26, to more than double Hoogovens' weighted-average margin in the preliminary results of review. Because no duties have been assessed, reimbursement could not have occurred, and the Department's determination is premature. Hoogovens claims that the reimbursement regulation may not be applied prospectively at the time of the final results, but may only be applied at the time of liquidation by Customs. Hoogovens has submitted for the record evidence demonstrating that it has revised its agency agreement with Hoogovens Steel USA, Inc. (HSUSA) to clarify that no reimbursement will occur.

Respondent argues that the Department lacks the statutory authority to deduct from U.S. price the amounts of antidumping duties paid or reimbursed by foreign exporters to affiliated importers. The Department's authority, Hoogovens alleges, does not extend to situations where transactions cannot be construed as payments by a seller to a buyer, and cannot therefore affect U.S. price. Because there is no sale between Hoogovens and HSUSA, an affiliated selling agent which neither purchases, takes title to nor resells subject merchandise, transactions between Hoogovens and HSUSA have no effect on the price of Hoogovens' U.S. sales. Respondent cites the CIT's decision in *Outokumpu Copper Rolled Products AB* v. United States, 829 F. Supp. 1371 (1993) in support of the claim that the reimbursement regulation only applies to transactions between a seller and a buyer.

Respondent argues that until recently the Department's view was that the reimbursement regulation is limited to

situations in which the importers or customers are unaffiliated. Since the Department ignores transfer prices and all other financial transactions between affiliated parties, no adjustments to U.S. price are ever made as a result of these transactions. Hoogovens claims that the reimbursement regulation is therefore inapplicable in constructed export price (CEP) situations, citing *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et. al.,* 58 FR 39729, 39736 (July 26, 1993). In *Color TVs,* the Department justified the extension of the reimbursement regulation to affiliated parties in CEP transactions on the basis that otherwise the remedial effect of the antidumping law could be defeated. 61 FR at 4410. In short, the reimbursement regulation is intended to prevent attempts by foreign exporters to avoid the impact of an antidumping order by reducing the effective price to U.S. customers. Hoogovens considers that the Department's application of the reimbursement regulation to CEP transactions is without statutory basis. Further, respondent argues that since transactions between Hoogovens and HSUSA are not CEP sales, and Hoogovens does not make CEP sales of subject merchandise to unaffiliated purchasers, antidumping margins cannot be calculated on transactions between Hoogovens and HSUSA, as these transactions have no bearing on the effective price to Hoogovens' unaffiliated U.S. customers.

Finally, respondent claims that in the absence of any possible effect on U.S. price, the Department's decision to make a deduction in this case can only be construed as an attempt to expand the reimbursement regulation to treat duty as a cost. Further, respondent alleges that the Department's methodology in the preliminary results of deducting the calculated margin from U.S. price, thereby more than doubling Hoogovens' dumping margin, violates Article 9.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''WTO Antidumping Code'), which provides that the amount of any antidumping duties assessed shall not exceed the calculated dumping margin.

Petitioners support the Department's decision to apply the reimbursement regulation and to deduct from U.S. price the antidumping duties that Hoogovens has agreed to reimburse to its affiliated importer. In *Color Television Receivers from the Republic of Korea,* 61 FR 4408, 4411 (February 6, 1996), the Department determined that reimbursement takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties.

Petitioners argue that the Department's decision to apply the reimbursement regulation in the preliminary results of this review was well founded, given the verified record evidence. At verification, the Department examined HSUSA's role as the importer of record, including its payment of import duties and fees. The Department examined the notes to NVW's financial statements, credit notes and the associated bank statements, and obtained Hoogovens'' agency agreement with NVW (now known as HSUSA).

Petitioners argue further that respondent's interpretation is flatly inconsistent with the terms of the regulation and has been explicitly rejected by the Court of International Trade (CIT). The regulation provides that the adjustment for the reimbursement of antidumping duties will be made in calculating the United States price. *See* 19 CFR 353.26 (a) (1). As the Department calculates the United States price at the time of its final results, not some time after liquidation and the actual payment of antidumping duties, the regulation plainly anticipates that an adjustment for the reimbursement of antidumping duties can be made as part of the final results based on evidence of an agreement to reimburse such duties.

Petitioners cite the CIT's decision in *PQ Corp.* v. *United States,* 652 F. Supp. 724, 737 (CIT, 1987), reaffirmed in *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (CIT, 1993), as approving the Department's practice of making an adjustment for reimbursed antidumping duties (1) as part of its calculation of the dumping margin, (2) based on the actual amount to be assessed, and (3) based on the producer's agreement to reimburse such duties.

Petitioners argue further that in cases where there is no clear evidence of an agreement to reimburse, the CIT has looked to whether there is ''a link between intracorporate transfers and the reimbursement of antidumping duties.'' *See, e.g. Torrington Company* v. *United States,* Slip. Op. 96–163, CIT (1996). In the present case, the Department found evidence of both an agreement to reimburse antidumping duties and actual evidence of such reimbursement in the form of transfers to cover cash deposits of antidumping duties.

Petitioners urge the Department to reject the amended agency agreement filed by respondent on September 26, 1996, as untimely. Even if the Department does not reject the new information, petitioners argue that at the time the transactions took place, and at the time the merchandise was imported, respondent had agreed to reimburse antidumping duties.

Petitioners note that the test for determining whether the reimbursement regulation applies in a situation where there is an affiliated importer is not whether there has been a demonstrated impact upon the U.S. price, but whether the evidence demonstrates that the exporter directly pays or reimburses the importer for such duties. *See Color Televisions from Korea,* 61 FR at 4411; *Brass Sheet and Strip from the Netherlands,* 57 FR at 9537 (March 19, 1992); *Brass Sheet and Strip from Sweden,* 57 FR at 2708 (January 23, 1992); *Brass Sheet and Strip from Korea,* 54 FR at 33258 (August 14, 1989). Petitioners further observe that even though the regulation does not require some kind of independent showing of an effect on price, it is clear that where an exporter reimburses an importer for antidumping duties, the importer, along with the ultimate purchaser, is relieved of liability of the duties.

Petitioners argue that Hoogovens' claim that the Department's application of the reimbursement regulation in this review violates the WTO Antidumping Code is unfounded. Article 2.4 of the Code specifically provides for adjustments to be made to ensure a fair comparison between the export price and the normal value. In petitioners' view, the Department appropriately made an adjustment to account for the fact that Hoogovens was reimbursing the importer for antidumping duties, and was therefore bearing the expense of such duties.

Department's Position

We previously determined that reimbursement, within the meaning of § 353.26 of the Department's regulations, takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties. *See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, (''Final Results of Korean Tvs'')* (61 FR 4408, 4411, Feb. 6, 1996). This position has been upheld by the Court of International Trade in *Outukumpu Copper Rolled Products AB* v. *United States,* 829 F. Supp. 1371 (CIT 1993). However, as we also stated in the *Final Results of Korean Tvs,* application of the regulation to affiliated parties does not imply that exporters and producers automatically will be assumed to have

reimbursed affiliated U.S. importers for antidumping duties by virtue of the relationship between them. While we have recognized that all transactions between affiliated parties must be scrutinized with care, the relationships between the parties are too complex to justify such an assumption. Instead we have relied upon evidence of inappropriate financial intermingling or an agreement to reimburse antidumping duties between the two affiliated parties. *Id* at 4411.

Consistent with our practice, in the first administrative review of this order we stated that an agreement to reimburse antidumping duties is sufficient to trigger the reimbursement regulation. *See Certain Cold-Rolled Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review;* 61 FR 48465, 48470 (Sept. 13, 1996). For the preliminary results of this review, as in the first review of this order, we based our determination upon evidence that an agreement was in place for the reimbursement of duties to be assessed. *See Certain Cold-Rolled Steel Flat Products From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review;* 61 FR 51888, 51891 (Oct. 4, 1996). In light of the evidence now on the record, we have determined that Hoogovens and HSUSA no longer have an agreement to reimburse antidumping duties to be assessed for this review and that HSUSA is responsible for the payment of such duties. *See* Proprietary Memo to File, April 2, 1997.

Petitioners have argued that Hoogovens continues to reimburse duties. However, in the Department's view, the evidence on the record of this review indicates that the respondent has changed its practice with respect to reimbursement and has refunded cash deposits paid by Hoogovens.

Further, petitioners seek to invoke the reimbursement regulation regardless of whether an amended agreement makes HSUSA responsible for payment of all antidumping duties and requires the U.S. affiliate to refund cash deposits because, petitioners contend, at the time the transactions took place, respondent had agreed to reimburse antidumping duties. We find this argument unpersuasive. The issue is not when the arrangement to reimburse was abrogated, but rather whether there is an agreement to reimburse antidumping duties to be assessed at the time of the final results. As we stated in the first review, the payment of cash deposits does not, by itself, constitute reimbursement of, or an agreement to reimburse, antidumping duties to be assessed. In the preliminary results of this review, as in the first review, we determined that the payment of cash deposits by the parent company substantiated the existence of an agreement to reimburse duties to be assessed. For these final results, HSUSA has presented evidence that the agreement has been amended to eliminate reimbursement of antidumping duties. It has substantiated that amendment with evidence of a refund of cash deposits pertaining to entries in the first review period. Based upon this evidence, we determined that Hoogovens is no longer reimbursing, or has an agreement to reimburse, antidumping duties to HSUSA. Therefore, we have not applied the reimbursement regulation in the final results of this review.

While we find that, based upon the evidence on the record, the reimbursement regulation is inapplicable in this review, as noted above, transactions between affiliated parties must be scrutinized with care. Because Hoogovens previously had an agreement to reimburse duties, and continues to advance the funds to cover cash deposits, in future reviews we will thoroughly monitor the refund of cash deposits, scrutinize the operation of the agreement, and examine whether there is any inappropriate financial intermingling, to ensure that reimbursement does not recur. In addition, we will verify relevant information submitted on the record, where appropriate.

Comment 2

Hoogovens argues that the Department's method of calculating profit resulted in an excessive allocation of profit to constructed export price (CEP) sales. This occurred, respondent alleges, because the Department calculated the total profit on all reported sales, including export price (EP) sales and home market (HM) sales that were outside the actual period of review (POR) of August 1994 to July 1995. The extended window period for home market sales in this review was December 1993 to September 1995, whereas Hoogovens was required to report CEP sales made during the POR. The calculation of profit for a longer period on EP and HM sales than for the reported CEP sales results in an increase in the amount of profit allocated to CEP and hence deducted from U.S. price. This, in turn, artificially inflates the margins on CEP sales. Hoogovens claims that in calculating the CEP profit ratio, the Department should calculate the total profit based only on EP and home market sales made during the actual POR.

Petitioners counter that this suggestion conflicts with the plain language of section 772 (f) (2) of the Act. Under the statute, only normal value and CEP sales are considered in the calculation of CEP profit. EP sales do not enter into the calculation. The Department's program erroneously included the profit from EP sales. The statute defines total actual profit as the total profit earned by the foreign producer, exporter and affiliated parties (in the United States) for which total expenses are determined. In turn, total expenses are defined as those ''incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.'' The Department requested home market information for the extended window period challenged by Hoogovens; therefore under the statute the Department must calculate profit using this same information.

Department's Position

We disagree with respondent. The expenses requested by the Department for the purpose of establishing the normal value of the foreign like product sold in the Netherlands were those incurred during the extended window period. Consequently, the statute provides that these expenses are to be used in the calculation of the CEP profit ratio. We disagree with petitioners' argument that EP sales should be excluded from the total profit calculation. The calculation of total actual profit under section 772(f)(2)(D) includes all revenues and expenses resulting from the respondent's EP sales, as well as from its CEP and home market sales. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C). The first alternative under this section states that for purposes of determining profit, the term ''total expenses'' refers to all expenses incurred with respect to the subject merchandise, as well as home market expenses. Where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions.

Comment 3

Petitioners argue that in the preliminary results, the Department improperly excluded imputed expenses (*i.e.*, credit expenses and inventory carrying costs) from the calculation of

total United States expenses for the purpose of determining profit on CEP sales. Section 772(d) of the Act provides that the price used to establish CEP shall be reduced by an amount for profit allocated to U.S. selling expenses and costs of further manufacturing. Section 772(f) further provides that the profit shall be determined by multiplying total actual profit by the ''applicable percentage,'' *i.e.*, the percentage determined by dividing ''total United States expenses'' by the total expenses. The statute defines ''total United States expenses'' as the total expenses described in sections 772(d) (1) and (2). These sections refer to the direct and indirect selling expenses incurred in the United States and the cost of any further manufacturing in the United States.

Petitioners argue that CEP is calculated by deducting credit expenses and inventory carrying costs (''ICC'') (from the selling price to the first unaffiliated customer) under section 772(d)(1). Accordingly, these amounts must be considered a part of ''total United States expenses'' and must be included in the allocation factor for such expenses. In *Certain Stainless Wire Rods from France,* the Department indicated that this is its practice (61 FR 47874, 47882 (September 11, 1996)):

> When the Department allocates a portion of the actual profit to each U.S. CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines ''total United States Expenses'' as the total expenses described under section 772(d) (1) and (2). Such expenses include both credit and inventory carrying costs.

Petitioners conclude that the Department should correct its margin program to include imputed expenses in the calculation of total United States expenses.

Respondent argues that the Department should not include imputed expenses in its allocation of profit to CEP sales. In the preliminary determination, while the Department excluded the imputed expenses from CEPSELL, it also excluded imputed expenses on EP and home market sales from both the calculation of total profit and the allocation of the profit. While petitioners argue that the Department should include the imputed expenses in the numerator for this allocation (CEPSELL), they fail to mention that these expenses should also be included in the denominator (TOTEXP) for this calculation. Hoogovens argues that the petitioners' methodology would artificially inflate the allocation ratio, which would overstate the amount of profit allocated to the CEP sale.

Hoogovens takes no position on whether the imputed expenses should be included or excluded from the CEP allocation. Its sole concern is that these expenses be treated consistently in all aspects of the CEP profit allocation. In the event that the Department decides to include the imputed expenses in the CEP selling expenses used to allocate profit, Hoogovens argues the Department should ensure consistency by including the imputed expenses in all aspects of the profit allocation. Thus, in calculating the ratio of U.S. selling expenses to total selling expenses, Hoogovens argues the Department should include the imputed expenses on CEP sales in the numerator (CEPSELL), and should include the imputed expenses on all U.S. and home market sales in the denominator (TOTEXP).

Department's Position

We agree with petitioners that imputed credit and inventory carrying costs should be included in the definition of total United States expenses used in the allocation of profit to CEP sales, consistent with section 772(f)(1), and have revised our methodology for these final results. The *Statement of Administrative Action* (SAA) of the URAA states that: ''The total U.S. expenses are all of the expenses deducted under section 772(d) (1) and (2) in determining the constructed export price.'' SAA at 154. The SAA also explains section 772(d)(1)(D) as providing for the deduction from CEP of indirect selling expenses. These typically include imputed inventory carrying costs, which represent the opportunity costs of the capital tied up in inventories of the finished merchandise. (*Id.*) Section 772(d)(1)(B) explicitly includes credit expenses as among the direct selling expenses to be deducted from CEP.

We disagree with respondent that imputed credit and inventory carrying costs should be added to the total expenses used in the denominator in the CEP profit allocation. In determining the amount of profit to allocate to each CEP sale, the Department first computes the total profit earned by the foreign producer. This amount is based on the producer's actual profits calculated in accordance with section 772(f)(2)(D) of the Act and includes any below cost sales but excludes sales made to affiliates at non-arm's length prices. Because it is the ''actual'' profit, the amount reflects the actual interest expense incurred by the producer.

A portion of the total actual profit is then allocated to the U.S. expenses incurred for each CEP sale. This is done based on the applicable percentage described in section 772(f)(2)(A) of the Act. In calculating this percentage, the statute directs us to include in the numerator the CEP expenses deducted under 772(d), which includes imputed credit and inventory carrying costs. In contrast, the total expenses in the denominator are those used to compute total actual profit. *See* section 772(f)(2)(D). As discussed above, ''actual'' profit is calculated on the basis of ''actual'' rather than imputed expenses. Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.

Comment 4

Petitioners argue that the Department should reject Hoogovens' claim that it sells to only one level of trade (LOT). In respondent's initial Section A response in this review, Hoogovens stated that it sold to two categories of customers, which constituted distinct levels of trade: service centers and end-users. However, when it submitted its Section B response, Hoogovens claimed that all its customers were at a single LOT and that it was unable to distinguish between the selling functions performed for different customers. Hoogovens did not complete the chart identifying selling functions requested in a supplemental questionnaire until verification, and petitioners argue the Department should have rejected it as untimely.

Petitioners argue the record shows that Hoogovens' customers are at two levels of trade. First, petitioners claim that service centers, which function as distributors, and end users are at different phases of marketing. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Certain Cut-to-Length Carbon Steel Plate from Canada; Preliminary Results of Antidumping Administrative Reviews,* 61 FR 51891, 51896 (October 4, 1996). In its Section A response at 13 (Public Version), Hoogovens stated:

> The basis for distinguishing steel service centers from end-users is that the former do not consume the steel they purchase from Hoogovens, but rather function in a manner similar to distributors (although * * * some provide processing services). Steel service centers/distributors, in turn, sell cold-rolled steel to the same types of end-user customers

as Hoogovens. Thus, the end-user customers are further ''removed'' from Hoogovens' factory than are the steel service centers.

Petitioners argue that the differences in the selling functions performed for each group are well-documented, citing Hoogovens' statement that it provided ''far greater sales assistance, such as quality and product development support'' to its end-user customers than to its service center customers. Hoogovens also stated that it had just-in-time (JIT) delivery arrangements with many of its end-user customers, but not with service centers. (Section A response at 14.) Petitioners ask the Department to consider service centers and end-users as distinct levels of trade for the final determination, and to make LOT adjustments, as appropriate. Finally, petitioners ask the Department to deny Hoogovens the capped CEP adjustment, because Hoogovens has failed to provide complete or timely LOT data in this review.

Hoogovens responds that at the time it submitted its Section A response in this review, the Department had not yet published any determinations explaining and applying the URAA LOT provisions. Hoogovens continued to rely on the levels of trade used in the investigation and the first administrative review, which were based on the market function of the customer, rather than on selling functions performed by Hoogovens. While Hoogovens stated that it provides more ''sales assistance'' to end-user customers, the basic distinction was the nature of the customer's business rather than the selling functions performed by Hoogovens.

To the best of Hoogovens' knowledge, the supplemental questionnaire issued by the Department in the investigation of *Certain Pasta Products from Italy and Turkey,* of which Hoogovens received a copy before it submitted its Section B response, was the first time that the Department had developed a series of questions designed to assist in making determinations of LOT under the URAA LOT provisions. After reviewing the questionnaire, Hoogovens determined that it could not substantiate the previously-claimed LOT based on the selling functions it performed for sales to the two categories of customers.

Petitioners are wrong, Hoogovens argues, to say that identifying sales ''at different phases of marketing'' represents ''the first prong of the test to demonstrate two different levels of trade.'' Petitioners' Brief at 5. On the contrary, Hoogovens claims, it is well-established that under the URAA and as stated in ADDENDUM I to the Department's questionnaire, ''the selling functions that a customer performs do not establish that different LOTs exist * * *'' Although the petitioners rely on the Department's preliminary determination in the 1994/95 administrative reviews of the Canadian flat-rolled steel cases as support for their interpretation, in those results, Hoogovens argues, the Department stressed that ''even substantial'' differences in selling functions are not alone sufficient to establish different LOTs. *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Certain Cut-to-Length Carbon Steel Plate from Canada; Preliminary Results of Antidumping Administrative Reviews,* 61 FR 51891, 51896. Respondent points out that even where it found customers at different phases of marketing, the Department did not necessarily find different LOTs.

Hoogovens argues that the petitioners have failed to point to any evidence in the record showing that Hoogovens provides different levels of selling functions to automotive versus other customers. In the investigation, the Department concluded that automotive customers did not constitute a separate LOT. At that time, petitioners argued that Hoogovens had ''totally failed to demonstrate significant differences'' between automotive and other sales. *Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58* FR 37199, 37203 (July 9, 1993).

In its supplemental response dated January 19, 1996, Hoogovens explained (on page 5) that it had not filled out the chart on LOT, because it had determined that there were no quantifiable differences between LOTs for any of the listed selling functions. Hoogovens points out that during verification, the Department sought to verify the statement contained in the supplemental response by interviewing the Senior Sales Executive and reviewing the chart with him. For that purpose, Hoogovens prepared the chart contained in Verification Exhibit 12. Hoogovens believes that the verified evidence in the record confirms the Department's conclusion that there are no differences in LOT in either the EP or home markets resulting from differences in selling functions performed by Hoogovens. Moreover, in Hoogovens' view, this conclusion is consistent with the Department's analysis of respondents in other steel reviews.

Department's Position

Neither the statute nor the SAA defines LOT. The relevant provision in the statute, section 773(a)(7)(A), allows for a LOT adjustment where there is a difference in LOTs between the EP or CEP and normal value, if that difference involves the performance of different selling activities, and it is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the foreign comparison market. This adjustment may either increase or decrease normal value. SAA at 829.

Although the identity of the customer (*e.g.,* end-user or service center) is an important indicator in identifying differences in LOT, the existence of different classes of customers, as well as different functions performed by such customers, is not sufficient to establish a difference in the LOTs. Accordingly, we consider the class of customer as one factor, along with the producer/exporter's selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.,* the LOT associated with the sales in question.

For CEP sales, the relevant customers in our LOT analysis are Hoogovens'' U.S. affiliates, *i.e.,* the customers at the level of the CEP. The CEP represents a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. SAA at 823. The adjustments we make to the starting price pursuant to section 772(d) of the Act normally change the LOT. Accordingly, we must determine the LOT of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this subsection. This approach does not result in a reliance on an ex-factory transfer price to the U.S. affiliate in our LOT analysis. Transfer prices do not enter into our analysis because the CEP is a calculated price derived from the resale price to the first unaffiliated customer. CEP is not a price exclusive of all selling expenses, because it contains the same type of selling expenses as a directly observed export price. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2107 (January 15, 1997) (AFBs VI).

We agree with petitioners that end-users and service centers/distributors constitute different phases of marketing. However, as respondent notes, this is not sufficient for the Department to find that different LOTs exist. In order to determine whether sales in the

comparison market are at a different level of trade than the export price or CEP, we examine whether the comparison sales were at different stages in the marketing process than the export price or CEP. We make this determination on the basis of a review of the distribution system in the foreign comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. *See* AFBs VI at 2105.

Initially, Hoogovens stated that there were multiple levels of trade and that it performed different selling functions for its end-user customers than for its service center customers. However, the LOT chart provided by respondent at verification indicated that the selling functions provided to all customers, in both markets, are identical. Hoogovens explained that after more in-depth examination, it was unable to distinguish among the selling functions provided to different categories of customers. *See* Verification Report, p. 10. Based upon the results of our verification, we find that there are no differences in LOT. See the comment below on CEP offsets.

Comment 5

Hoogovens argues that the Department should make a CEP offset adjustment to normal value pursuant to section 773(a)(7)(B) of the Act when comparing the reported CEP sales to normal value. Respondent claims the Department's practice is to compare the ex-factory CEP price to the price of the home market sale, including all selling functions that are provided to home market customers. Hoogovens argues that the Department has repeatedly concluded that a CEP offset is appropriate where it finds, following this comparison, that the unadjusted home market price is at a more advanced level of trade (LOT) than the adjusted CEP price. In the preliminary results, the Department concluded that there were no differences between the adjusted CEP price and the unadjusted home market price. Hoogovens claims that this results in a comparison of sales at different levels of trade, because the starting price of the home market sales allegedly reflects many selling activities not reflected in the adjusted CEP price. These include indirect selling activities, indirect technical service and warranty expenses, and inventory carrying costs incurred on home market sales. All of these types of expenses have been deducted from the net CEP used to establish the LOT for CEP sales. Accordingly, Hoogovens concludes, the home market LOT must be deemed to be at a different, more advanced LOT than the adjusted CEP LOT.

Hoogovens claims there were no sales in the home market at a LOT equivalent to the CEP LOT. Moreover, all home market sales were at the same LOT. There are no data available to quantify a LOT adjustment to account for the difference between the CEP LOT and the home market LOT. Accordingly, Hoogovens concludes, the Department should make a CEP offset adjustment to normal value for indirect selling expenses up to the amount of indirect selling expenses deducted from CEP, as required by 19 U.S.C. 1677b(a)(7)(B).

Petitioners point out that the CEP offset is not automatic. The respondent bears the burden of demonstrating that such an offset is warranted. *See Mechanical Transfer Presses from Japan,* 61 FR 52910, 52915 (October 9, 1996); *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139, 38143 (July 23, 1996). Petitioners argue that to qualify for a CEP offset, a respondent must first establish that there are different levels of trade between home market and U.S. sales. Then, if the data on the record do not provide an adequate basis for a LOT adjustment and normal value is established at a more advanced stage of distribution than the CEP, the Department is required to reduce normal value by the CEP offset.

Petitioners argue that Hoogovens has failed to meet the prerequisites for such an adjustment, because it has provided no evidence that its CEP sales are at a distinct LOT from its home market sales. In response to the Department's request at verification for LOT data, Hoogovens' Senior Sales Executive stated that the company ''provides the same types of services to all customers in all markets.'' (Sales Verification Report at 10 (Public Version).)

Department's Position

Respondent's claim for a CEP offset is inconsistent with its position that its sales are to only one LOT in both markets. (See Comment 4.) In submitting its LOT chart at verification, Hoogovens did not identify any differences in selling functions and selling expenses between its home market sales and CEP sales after deductions of the U.S. expenses pursuant to section 772(d) of the Act. In accordance with section 773(a)(7)(B) of the Act, a CEP offset is granted where normal value is established at a LOT which constitutes a more advanced stage of distribution than the LOT of the CEP sale and the data available do not provide an appropriate basis to determine a LOT adjustment. Hoogovens failed to meet any of these requirements under section 773(a)(7)(B). Indeed, Hoogovens failed to make a LOT claim and has failed to substantiate any claim.

The instructions regarding LOT in ADDENDUM I to the Department's questionnaire explained:

> When the U.S. sale is classified as a constructed export price (CEP) sale, the LOT for that sale is based upon the selling functions provided by the seller (i.e., the exporter and its affiliates) to the first unaffiliated party, less those selling functions related to expenses which are deducted under section 772(d) of the Act. Thus, for CEP sales, the selling functions used to establish the LOT cannot include selling functions related to expenses deducted under section 772(d). For comparison market sales, the LOT is based upon the selling functions provided by the seller (and its affiliates) to the first unaffiliated customer.

Respondent failed to respond to the Department's supplemental questionnaire on LOT by the due date. The instructions for preparing the LOT chart specifically asked respondents not to include in the chart those expenses deducted from U.S. price. These deductions include direct selling expenses (credit expense), indirect selling expenses (warranties, inventory carrying costs) and further manufacturing costs. In filling out the chart submitted at verification, Hoogovens did not distinguish between its CEP sales, which are all further manufactured, and its EP sales. Despite being given every opportunity to demonstrate on the record that its CEP sales and home market sales are at different levels of trade, Hoogovens has failed to establish that normal value is at a different LOT than CEP sales. Rather, to the contrary, Hoogovens insisted that there were no differences in the services provided to customers in the two markets. The SAA states:

> Only where different functions at different levels of trade are established under section 773(a)(7)(A)(i), but the data available do not form an appropriate basis for determining a level of trade adjustment under section 773(a)(7)(A)(ii), will Commerce make a constructed export price offset adjustment under section 773(a)(7)(B). (SAA at 160.)

Thus, the adjustment is not automatic and the burden is on the respondent to

demonstrate that normal value is at a different LOT than the CEP, and that the normal value LOT is at a more advanced stage of distribution (i.e., more remote from the factory). Hoogovens has failed to establish the basis for any CEP offset. Accordingly, we have not granted a CEP offset adjustment in the final results of this review.

Comment 6

Respondent argues that the Department should not match U.S. sales of secondary merchandise (''seconds'') to constructed value (CV) for prime merchandise. The Department's policy in the steel cases is to match sales of prime merchandise to other sales of prime merchandise, and to match sales of seconds in the U.S. market to sales of seconds in the comparison market. In the preliminary results, where there were no matching home market sales of seconds within the ''90/60 window'' period, the Department matched the U.S. secondary sale to the CV of sales of prime merchandise. Hoogovens disagrees that the Department is compelled by the decision of the Court of Appeals in *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1060 (Fed. Cir. 1992), to use this approach, and alleges that this comparison results in unfair and artificially inflated margins on U.S. sales of seconds. Hoogovens argues that this allegedly unfair approach could be avoided by the expedient of matching U.S. sales of seconds to home market sales of seconds that pass the difmer test, without considering whether they fall within the ''90/60 window'', to calculate margins for seconds.

Petitioners argue that the Department should reject Hoogovens'' proposed change in methodology, which fails to recognize that the Department's methodology is consistent with past practice and in accordance with *IPSCO*, in which the Court upheld the Department's practice of allocating production costs equally between secondary and prime merchandise. Petitioners also point out that the reason the Department uses the ''90/60 window'' is that it satisfies the statutory requirement (section 773 (a) (1) (A)) that normal value be compared with contemporaneous EP or CEP sales. *See also Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 61 FR 1328, 1332 (January 19, 1996).

Department's Position

We agree with the petitioners. Seconds are merchandise which has suffered some sort of defect either in the production process or in subsequent handling, and does not meet the customer's specifications. In this review, we have continued to follow the policy with respect to comparisons of sales of seconds set forth in the first review of this order. (*See Cold-rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review,* 61 FR 48465, 48466–7 (September 13, 1996).) We only resorted to CV when there were no contemporaneous matches of seconds.

Hoogovens' suggestion that we use home market sales outside the ''90/60 window'' period is inconsistent with the requirement in section 773 that we use contemporaneous sales as the basis for normal value.

In *Decision Memorandum* from Roland L. MacDonald to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, ''Treatment of Non-Prime Merchandise for the First Administrative Review of Certain Carbon Steel Flat Products,'' (April 19, 1995) at 4, we stated: ''In past cases the Department has held that the cost of production (COP) of seconds is the same as the COP of the prime merchandise it was intended to be because seconds have undergone the same production processes as prime merchandise.'' The Department's methodology for calculating the COP for primary and secondary merchandise has been upheld by the Court of Appeals. *See IPSCO.* Similarly, there is no basis on the record for distinguishing between the CV of primary and secondary merchandise.

Comment 7

Hoogovens argues that the Department should use the Customs Service's quarterly exchange rates to make currency conversions in its final determination. At the time it made the sales under review, Hoogovens expected that their antidumping duty liability would be determined on the basis of these rates. However, on March 8, 1996, the Department published a notice that it intended to change its practice for determining the exchange rate, and would use Federal Reserve daily exchange rates for one year, and then evaluate the model computer program's performance. *Notice: Change in Policy Regarding Currency Conversions,* 61 FR 9434 (March 8, 1996). Despite the fact that the change was announced over seven months after the end of the POR, and after verification in the current review, the Department used the proposed program to make currency conversions in the preliminary results. Hoogovens argues that the effect of this change is that its margins were determined using different exchange rates than those Hoogovens had reasonably expected would be used at the time it made the sales under review, resulting in considerable increases in Hoogovens'' antidumping duty liability. Respondent further claims that the Department's change of policy created dumping margins on a considerable number of sales for which Hoogovens reasonably expected that there would be no dumping margin found, and increased margins on many other sales. Hoogovens relied on the Department's consistent prior practice of using the Customs rates to set its prices so as to avoid dumping. Respondent argues that the Department should not apply retroactively such basic changes in methodology as the proposed currency conversion policy. According to Hoogovens, the Department must, under its duty to administer the law fairly, ''be bound by its prior actions so that parties have a chance to purge themselves of antidumping liability.'' *Shikoku Chemicals Corp.* v. *United States,* 795 F. Supp. 417, 421 (CIT 1992).

Section 773A of the Uruguay Round Agreements Act (URAA) provides that the Department shall convert currencies using ''the exchange rate in effect on the date of sale of the subject merchandise.'' 19 U.S.C. 1677b—1(a). Hoogovens argues that this section does not specify which rate the Department shall use or in any way mandate or prohibit the use of exchange rates obtained from any given source. Hoogovens claims that use of the Customs rates in this review would therefore be fully consistent with the mandate of section 773A to use the exchange rate in effect on the date of sale.

Petitioners argue that the Department's use in the preliminary determination of this review of the daily exchange rates in effect on the dates of sale, as certified by the Federal Reserve, is in accordance with the plain language of section 773A. The SAA also unequivocally states that the Department must adopt a new practice of applying a daily exchange rate, in the place of its previous practice of using a quarterly rate, as follows: ''Under new section 773A, the general rule will be to convert foreign currencies based on the dollar exchange rate in effect on the date of sale.'' SAA at 172. Petitioners note that the new law has taken effect and the Department is bound by it. Petitioners argue that Hoogovens had ample warning that a change in methodology was dictated by new section 773A. Therefore, in petitioners' view, the Department should continue to apply the daily exchange rate for the final results of review.

Department's Position

We agree with petitioners. This review was conducted in accordance with the URAA. Section 773A(a) requires the Department to ''convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise.'' Consequently, the Department has modified its methodology in various respects to conform to the new provisions in the law.

Comment 8

Petitioners claim that Hoogovens incorrectly calculated its inventory carrying costs (''ICC'') applicable to CEP sales. For these sales, Hoogovens reported the ICC from the time production was complete at IJmuiden until the time the merchandise cleared Customs at the U.S. port of entry in the field DINVCARU. ICC incurred by Hoogovens' U.S. affiliated companies prior to shipment to the U.S. customer were reported in the field INVCARU. In calculating both variables, petitioners allege Hoogovens failed to use the actual, product-specific cost of the merchandise. Instead Hoogovens used the price of the merchandise, deflated by the ratio of total cost of goods sold to total sales revenue to simulate the cost-based value of the merchandise in inventory. Petitioners argue that Hoogovens' methodology is flawed because it applies the ICC factor to the transfer price, rather than the cost of production. Petitioners claim that this is inconsistent with the Department's practice, which is to calculate ICC by dividing the number of days that the goods remain in inventory by 365 and then multiplying the result by the appropriate interest rate and the actual cost of the unit, i.e., the product-specific costs. Petitioners argue that the Department should recalculate Hoogovens' ICC using Hoogovens' reported constructed value (CV) according to the following formula:

DINVCARU/INVCARU = (COMCV + GNACV + INTEXCV) (interest rate) (number of days in inventory/365)

Hoogovens responds that the Department rejected the petitioners' argument with respect to the same methodology in the final results of Hoogovens' 1993/94 administrative review. *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, 48470 (September 13, 1996). Moreover, the Department also verified the reported data in the current review. Hoogovens argues that its methodology is in fact cost-based because after multiplying the ICC factor by the transfer price to its U.S. affiliates, it then multiplies the result by the ratio of Hoogovens' average cost of production to average sales price. Hoogovens states that this results in an ICC amount that is in effect based on the cost of production.

Hoogovens argues that the petitioners' proposed methodology contains several flaws. First, the petitioners propose to use the constructed value of manufacturing costs (COMCV) in their equation, which is inherently less accurate, because COMCV includes the product mix for sales to all markets of each CONNUM (*i.e.*, EP, home market and CEP), whereas Hoogovens' methodology is based solely on the costs of material actually sold by the U.S. affiliates. Second, petitioners did not convert the values used in their proposed calculation (COMCV, GNACV, AND INTEXCV) , which are reported in guilders, to U.S. dollars. This correction would substantially reduce the amount of ICC calculated under their methodology. Hoogovens argues that petitioners have failed to show that there is anything unreasonable or inaccurate in Hoogovens' ICC methodology, and that the Department should accordingly continue to use the reported ICC amounts in the final results.

Department's Position

We agree with the respondent that the methodology Hoogovens used is reasonable, and have accepted the verified reported ICC amounts. Hoogovens' accounting system used in the normal course of business is based upon standard costs. Consequently, the costs carried in the company's accounts are not product (or CONNUM)-specific. While CV is CONNUM-specific for the products sold in the United States, general, selling and administrative expenses and profit are calculated as if the merchandise were sold in the home market. Hoogovens' use of the ratio of average costs of cold-rolled carbon steel flat products to the average sales price during the POR as a deflator for the transfer price to its affiliates in the United States is therefore a reasonable approximation of a product-specific, cost-based ICC calculation.

Comment 9

Petitioners claim that Hoogovens incorrectly reported yield losses associated with its U.S. affiliate's further manufacturing operations. Hoogovens determined the yield loss per machine by dividing the total scrap generated during processing by the starting weight processed at each machine. Petitioners argue that Hoogovens omitted to take into account ''unrecovered scrap'' in the numerator of this calculation, and that the Department should resort to facts otherwise available under section 776 of the Act. Petitioners further assert that the Department should make an adverse inference in its selection of facts available, because of Hoogovens' alleged failure to comply with a request for information from the administering authority. *See* 19 U.S.C. 1677e(b).

Hoogovens replies that petitioners have simply misread or misunderstood the yield loss reports from which Hoogovens calculated its affiliate's yield loss ratios. Hoogovens argues that a proper reading of the yield loss reports reveals that there was no such ''unrecovered scrap.'' Petitioners incorrectly assumed that several headings listed on the yield reports refer to material that vanished as ''unrecovered scrap'' during or after processing. Hoogovens explains that none of these categories, however, refer to actual scrap or material otherwise lost or damaged in processing that was not accounted for in Hoogovens' calculation. Hoogovens argues that the verified evidence in the record does not support petitioners' claim that any unsalvaged material losses were omitted from Hoogovens' reported ratios. *See* RBC Verification Report at 17. Hoogovens urges the Department to use the reported yield loss ratios in the final results.

Department's Position

We agree with respondent. The Department verified the reported yield losses and found no discrepancies. Petitioners' allegations are based on a misinterpretation of certain column headings in the yield loss report. *See* RBC Verification Exhibit 27.

Comment 10

Petitioners argue that Hoogovens failed to include the costs of certain outside processing in RBC's reported cost of materials. Hoogovens instead added these costs to the further manufacturing cost reported in FURMANU. Because these outside processing costs were part of RBC's direct material costs, petitioners argue that these costs and the freight expenses for transporting these goods to RBC, should have been reported as material costs and should have been subject both to the application of yield loss and the allocation of G&A and interest expenses. The Department's questionnaire instructs respondents at page E–7 to include in the direct materials component of further manufacturing costs ''transportation charges and other expenses normally associated with

obtaining the materials that become an integral part of the finished product sold in the United States.'' Petitioners calculated an amount they propose that the Department add to the relevant sales to account for additional yield loss, interest and G&A expenses.

Hoogovens replies that it added the cost of further processing paid to the outside processor, increased by the yield loss associated with outside processing, to the reported further manufacturing costs for the relevant sales. It reported G&A and interest expenses for the appropriate sales as part of the costs of processing this material at RBC. Some of RBC's overhead and administrative costs were allocated to the material processed by the outside processor. Hoogovens argues that this material does not cost more to process because of the processing it has undergone prior to arrival at RBC. Accordingly, to allocate more processing and administrative costs to these sales would appear to be double-counting. Moreover, there are two errors in the petitioners' proposed correction, one in the proposed yield loss and the other in the G&A factor.

Department's Position

We agree in part with the petitioners. The transportation charges associated with bringing the steel processed by the outside processor to RBC's plant should have been included in direct materials cost and an amount added to the relevant sales to account for additional yield loss, interest and G&A expenses. However, since we disagree with petitioners' calculation of the yield loss (as discussed in Comment 10) and petitioners used the wrong G&A factor, we have modified the petitioners' suggested programming code to correct further manufacturing costs for outside processed sales using the values for yielded outside processing costs, SG&A and interest expense shown in Exhibit 1 of respondent's rebuttal brief. (*See* the Department's margin calculation program.)

Comment 11

Petitioners argue that Hoogovens should have included U.S. port-to-plant freight costs and repacking expenses incurred in the United States in further manufacturing costs. Instead, they were reported in the Section C (CEP) data base in the fields ''INLFPWU'' and ''REPACKU.'' Petitioners cite the Department's questionnaire, which states that further manufacturing costs include ''any costs involved in moving the product from the U.S. port of entry to the further manufacturer'' and ''additional U.S. packing expenses.'' Petitioners point out that inclusion of these expenses is important because of the effect on the allocation of profit for CEP sales. To correct this error, petitioners urge the Department to add the amounts reported in INLFPWU and REPACKU to FURMANU for each CEP (further manufactured) sale.

Hoogovens notes that it followed the Department's instructions in its questionnaire in reporting these expenses in the Section C (CEP) fields, ensuring that these expenses are properly deducted from U.S. price. Hoogovens argues that the alternative methodology proposed by the petitioners is pointless, as reporting these expenses in the Section E file would achieve the same result. To the extent that the Department considers it appropriate to include these expenses in the CEP profit allocation, Hoogovens proposes that the Department do so by means of a simple correction to the program. Hoogovens urges the Department to take great care that it does not double count these expenses.

Department's Position

We agree that these expenses should be included in total United States expenses for the purpose of calculating the CEP profit allocation, and have modified the computer program for the final results. We note that the Department's questionnaire contains conflicting instructions, and will take steps to clarify them in the next administrative review.

Comment 12

Petitioners observe that the Department's computer program makes several errors with respect to the currency of U.S. packing costs. Petitioners propose programming language to make the appropriate currency conversions.

Hoogovens comments that there are several errors in the petitioners' proposed language and proposes alternative corrections. Hoogovens points out that the petitioners erred in proposing to include the costs of repacking in the United States in the calculation of constructed value (CV).

Department's Position

We agree with petitioners that there were currency conversion errors in the treatment of packing expenses in the program used for the preliminary results of review. We also agree with Hoogovens that U.S. repacking should not be included in CV, because CV includes only costs incurred in the Netherlands. We have corrected the program for the final results of review.

Comment 13

Petitioners point out that Hoogovens added an extra category (''F'') to the thickness tolerance categories laid out in the Department's questionnaire. The Department's model match program, however, does not account for sales with a thickness tolerance of ''F.'' Petitioners propose programming language to correct this oversight. Hoogovens agrees with the proposed correction.

Department's Position

We have incorporated the proposed correction in the model match program for the final results.

Comment 14

If the Department decides not to apply the reimbursement regulation in its final results, petitioners urge that the antidumping duties be deducted as ''United States import duties'' or ''additional costs, charges, or expenses'' under section 772(c)(2)(A) of the Tariff Act of 1930, as amended. Petitioners argue that the plain language of the statute requires that the Department deduct antidumping duties paid by the respondent or its related party from the price used to establish EP or CEP. Specifically, petitioners state that the phrase ''import duties,'' as used in 19 U.S.C. 1677a(c), includes AD and Countervailing 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.'' Petitioners argue that U.S. courts and agencies charged with administering the customs and unfair trade laws have long recognized that ''Congress desired and intended that {AD/CVD} duties * * * should be considered as duties for all purposes.'' *C.J. Tower & Sons* v. *United States,* 71 F.2d 438, 445 (C.C.P.A. 1934). *See also Imbert Imports, Inc.* v. *United States,* 331 F. Supp. 1400, 1406 (Cust. Ct. 1971) and *PQ Corp.* v. *United States,* 652 F. Supp. 724, 736 n. 15 (CIT 1987). Petitioners assert that there is nothing in the language or legislative history of section 772(c) to indicate that Congress intended a meaning for the phrase ''import duties'' other than the ''natural and accepted'' meaning established by the courts. Petitioners further argue that under accepted canons of statutory construction, the items to be deducted in calculating EP and CEP pursuant to section 772(c)(2)(A) must be read to include AD/CVD duties. The cited section requires a deduction for import duties and other expenses ''except as provided in paragraph 1(C).'' This paragraph, in turn, refers to certain

countervailing duties imposed to offset export subsidies. If AD/CVD duties were not intended to be included in the items deducted under section 772(c)(2)(A), petitioners claim the exception provided by Congress for certain countervailing duties would be superfluous. Petitioners hold it is a fundamental precept of statutory construction that ''a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another.'' Sutherland Stat Const § 46.06 (5th Ed).

While petitioners admit that the CIT has never explicitly held that the language of section 772(c)(2)(A) covers actual antidumping duties, they claim it has assumed so implicitly. Petitioners cite *Federal-Mogul Corp.* v. *United States*, (813 F. Supp. 856, 872 (CIT 1993)) in which the plaintiff challenged the Department's refusal to deduct estimated antidumping duty deposits. According to petitioners, the CIT affirmed the Department's refusal to deduct the estimated AD duties, relying on the fact that the duty deposits were only estimates. However, petitioners claim, the Court did not adopt the Department's reasoning that section 772 applied only to ''normal'' import duties, and that antidumping duties were not normal duties within the meaning of the statute. This case, according to petitioners, requires the Department to deduct from U.S. price any import duties that can be accurately determined at the time the Department is calculating the current dumping margins.

Petitioners insist the legislative history of the URAA in no way suggests that Congress rejected the petitioners'' construction of section 772 (c)(2)(A). Petitioners claim that the Senate Finance Committee specifically recognized that the issue of whether antidumping duties must be deducted as a cost was being considered by the CIT, and directed the Department to abide by the outcome of that litigation. Accordingly, petitioners argue it is clear that Congress did not intend to ratify the Department's failure to treat duties as a cost in the URAA, but instead recognized that the issue would be resolved through the judicial process.

Petitioners conclude by stating that treatment of antidumping duties as a cost would be accomplished in the same manner as the adjustment for reimbursement of antidumping duties in the preliminary margin program. The actual difference between normal value and EP or CEP on each sale is calculated by the margin program. This difference is equal to the antidumping duties to be paid by the importer and referred to in section 772 (c)(2)(A). Once this difference is calculated, it must then be deducted from EP or CEP for use in calculating the final margin on each transaction.

Hoogovens claims that the petitioners' argument is flatly erroneous and is based either on a failure to acknowledge or a misinterpretation of statements by all three branches of government on this issue. In past cases the Department has repeatedly rejected the argument that antidumping duties should be deducted as a cost. In fact, the Department dealt with this issue and rejected petitioners' argument in the final results of the first administrative review of the order governing Hoogovens' imports of cold-rolled carbon steel. (61 FR at 48469.) *See* also *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 60 FR 44009 (August 24, 1995) and *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18553 (April 26, 1996). No reviewing court has ever reversed the Department's interpretation of the statute on this point. None of the cases cited by petitioners dealt with the issue at hand. For example, *C.J. Tower* described antidumping duties as ''duties'' for the purpose of distinguishing them from ''penalties'' that would require compliance with the due process guarantees of the Fifth Amendment to the U.S. Constitution. Hoogovens claims it did not remotely consider the issue whether antidumping duties are to be included among the ''United States import duties'' referred to in 19 U.S.C. 1677a (c)(2)(A).

Hoogovens points to the petitioners' acknowledgment that the Department's position before the CIT in *Federal Mogul* was that the statute's ''import duty'' language applied to neither antidumping deposits nor actual assessed duties, and Hoogovens asserts there have been no legal developments since the Department stated its position in that case to cause it to reconsider; to the contrary, all developments have been in favor of the Department's approach.

Hoogovens argues that petitioners have misinterpreted the legislative history of this issue, citing the Final Results of the 1993/94 administrative review, in which the Department stated that Congress put to rest the issue of AD/CVD duties as a cost in arduous debates during the passage of the URAA. (61 FR. at 48469.) Hoogovens also cites the House Ways and Means Committee's Report accompanying the URAA, which stated that the new duty absorption provision ''would not affect the calculation of margins in administrative reviews. This new provision of law is not intended to provide for the treatment of antidumping duties as a cost.'' H. Rep. No. 826 (I), 103rd Cong., 2d Sess. 60–61. Hoogovens concludes by asking the Department to reaffirm its conclusion regarding duty as a cost in the final results of this review.

Department's Position

It is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. 1677a(d). *See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, 48469 (September 13, 1996). Antidumping and countervailing duties are unique. Unlike normal duties, which are an assessment against value, antidumping and countervailing duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing 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 Court of International Trade. See *Federal-Mogul* v. *United States*, 813 F. Supp. 856, 872 (1993) (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties'').

In contrast, petitioners'' reasoning is circular rather than logical: in calculating the dumping margin the Department must take into account the dumping margin. Such double counting, i.e., including the same unfair trade practice twice in a single calculation, is unjustifiable, except in the limited circumstances provided for in § 353.26.

Moreover, the treatment of antidumping and countervailing 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 Uruguay Round Agreements Act (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 antidumping duties were being absorbed by affiliated U.S. importers. 19 U.S.C. 1675(a)(4). Thus, Congress put to rest the issue of antidumping and countervailing duties as a cost. URAA Statement of Administrative Action 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. (1994) at 60.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/ exporter	Period of review	Margin (percent)
Hoogovens Staal B.V.	8/1/94–7/31/95	4.33

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 cold-rolled carbon steel flat products from the Netherlands 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 rate for the reviewed company will be the rate for that firm as stated above; (2) 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 (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the ''all others'' rate from the amended final determination in the LTFV investigation. *See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 47871. 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 section 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. 97–9427 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–817]

Certain Cut-to-Length Carbon Steel Plate From Brazil: 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 Brazil. 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: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51904) the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Brazil (58 FR 44164, 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 Tariff Act of 1930, as amended (the Tariff 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,