in the Department's matching analysis.'' We, therefore, used the product characteristics attached to the petitioners' aforementioned response as our matching criteria, and did not include grade as a product characteristic. Excluding the grade from the matching criteria was, therefore, not an inadvertent or clerical error.

However, based on the arguments raised in this proceeding, we have reexamined our matching criteria. We note that indeed two of KKPC's reported products are assigned one control number based on our matching criteria, as verified. *Sales Verification Report* at page 6. Based on KKPC's written description of ESBR grades 1502 and 1507, as noted in its June 18, 1998, response to Section A of the Department's questionnaire, grade 1507 has a ''* * * lower mooney viscosity than the 1500 and 1502 grades.'' Based on our review of the record in this case, we find that the ranges for mooney viscosity, as defined by KKPC's standard specifications (and also reflected in the IISRP's *The Synthetic Rubber Manual*), are different for grades 1502 and 1507. In addition, there are cost and price differences between these two grades based on KKPC's submitted COPs and sales listings. Therefore, we recognize that mooney viscosity is an essential product characteristic that defines the grade, and conclude that KKPC's sales of grades 1502 and 1507 should be treated as two separate products for purposes of the final determination (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan*, 62 FR 60472, 60475 (November 10, 1997) (where the Department used additional product characteristics for the final results in order to prevent grouping of physically diverse chain as identical or similar merchandise)). In addition, for purposes of any future administrative reviews, the Department intends to include mooney viscosity as a product characteristic for matching purposes (*see Final Calculation Memorandum*).

Comment 10: Quantity Variable Used in the Margin Program

The petitioners argue that the Department made a certain inadvertent programming error in its preliminary margin calculation, and that the Department should correct this error for purposes of the final determination. Specifically, the petitioners note that the Department overstated the U.S. sales quantity by using an incorrect quantity variable.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination (*see Final Calculation Memorandum*).

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ESBR from Korea that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Korea Kumho Petrochemical Co., Ltd.	16.65
Hyundai Petrochemical Co., Ltd.	118.88
All Others	16.65

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7526 Filed 3–26–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–821]

Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico

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

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Import Administration: Group II, Office V, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

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 of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 351, 62 FR 27926 (May 19, 1997).

Final Determination

We determine that emulsion styrene-butadiene rubber (ESBR) from Mexico is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of

Liquidation'' section of this notice, below.

Case History

Since the preliminary determination in this investigation on October 28, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Mexico,* 63 FR 59519 (November 4, 1998) (Preliminary Determination)), the following events have occurred:

On November 23, 1998, we received revised factual information from Industrias Negromex, S.A. de C.V. (Negromex) regarding its sales responses. In December 1998 and January 1999, we conducted on-site verifications of questionnaire responses submitted by Negromex and its affiliated U.S. importer, GIRSA, Inc. (GIRSA). Also, in January and February 1999, we requested and received Negromex's revised home market and U.S. sales databases reflecting verification revisions. On February 10, 1998, the petitioners (*i.e.,* Ameripol Synpol Corporation and DSM Copolymer) and Negromex submitted case briefs. On February 17, 1999, the petitioners and Negromex submitted rebuttal briefs. We held a public hearing on February 22, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.'' ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Fair Value Comparisons

To determine whether sales of ESBR from Mexico to the United States were made at less than fair value, we compared the Constructed Export Price (CEP) to the Normal Value (NV). Our calculations followed the methodologies described in the preliminary determination except as noted in the Constructed Export Price and Normal Value sections of this notice, below.

Level of Trade

In the preliminary determination, we conducted a level of trade analysis for Negromex. We determined that a level of trade adjustment was warranted in lieu of a CEP offset. *See* Department's October 28, 1998, Level of Trade Analysis Memorandum to the File from The Team through James Maeder. Both Negromex and the petitioners commented on this issue. We have determined that it is appropriate to continue to make a level of trade adjustment in lieu of a CEP offset in this case. *See* Comment 2 in the ''Interested Party Comments'' section of this notice, below. Accordingly, for purposes of the final determination, we continue to hold that a level of trade adjustment, when appropriate, is warranted for Negromex.

Constructed Export Price

As in the preliminary determination, we used CEP methodology for all sales by Negromex, in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser took place after importation into the United States. We revised the U.S. indirect selling expense ratio of Negromex's affiliated importer, GIRSA, based on our findings at verification. *See* Comment 4 in the ''Interested Party Comments'' section of this notice, below. In addition, based on our findings at verification, we included a warranty expense in the United States in our calculation of CEP. Finally, we revised Negromex's reported date of sale, and we adjusted the quantity for one sale, for sales made under two long-term contracts consistent with our established date of sale methodology as discussed in Comment 3 in the ''Interested Party Comments'' section of this notice, below. *See also* Department's March 19, 1999, Final Determination Calculation Memorandum.

Normal Value

We used the same methodology to calculate NV as that described in the ''Normal Value'' section of the preliminary determination with the following exceptions:

For home market sales invoiced and paid in U.S. dollars, we used the reported dollar amount for purposes of calculating NV.

For one sale in the home market with no reported payment date, we used the last day of verification as the payment date.

Cost of Production

We calculated the cost of production (COP) based on the sum of Negromex's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) and financial expenses and packing costs, in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs, with the following exceptions: (1) Based on our findings at verification, as facts available, we adjusted the reported cost of direct materials by increasing the cost of the portion of styrene purchased from an affiliated party (*see* Comment 7, below); (2) we revised the G&A expense ratio based on changes resulting from verification; and (3) we included a

portion of the reported gains and losses on monetary position in our calculation of financial expenses (*see* Comment 6, below).

Constructed Value

In accordance with section 773(e) of the Act, we calculated constructed value (CV) based on the sum of Negromex's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. We relied on Negromex's submitted CV except for the adjusted direct materials cost and G&A and financial expense ratios as noted in the ''Cost of Production'' section above.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank in accordance with section 773A of the Act.

Interested Party Comments

Comment 1: Treatment of Additional Matching Criteria Proposed by Negromex

The petitioners argue that Negromex's proposal for the addition of five matching criteria (ash content, free soap content, styrene content variance, mooney viscosity variance, and vulcanization time tolerance) to the Department's model match was untimely. According to the petitioners, Negromex had the opportunity to suggest matching criteria from the onset of this investigation and, in fact, was requested to do so by the Department in a May 4, 1998, letter. Because Negromex did not respond to that request and, instead, proposed the five additional criteria after the issuance of the questionnaire, the petitioners assert that the Department must reject Negromex's argument for the additional criteria as late.

If the Department accepts Negromex's proposal as timely, the petitioners argue that any minor variations in ESBR resulting from customers' specifications should not lead the Department to treat ESBR with the same IISRP grade as distinct products. According to the petitioners, even though Negromex may make minor adjustments to its production process to meet customers' specifications, Negromex has not shown that such minor adjustments result in products different from the products produced within the same IISRP grade. The petitioners assert that the Department's practice is to consider physical characteristics of the final product, as opposed to minor adjustments to the production process, in selecting model matching criteria. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40445 (July 29, 1998) (*SSWR from Japan*). The petitioners claim that a customer's specifications often call for a narrower range than Negromex's general specifications for the percentage content of a specific input of ESBR. However, the petitioners argue, it is likely that all ESBR produced by Negromex falls within that narrower range. As a result, the petitioners contend that ESBR with the same physical properties would be treated by the Department as different products and would lead the Department to improperly compare products based on customer specifications instead of comparing products according to significant physical properties.

The petitioners also argue that Negromex has not demonstrated any cost differences between ESBR produced for a customer's specifications and other ESBR with the same IISRP grade. According to the petitioners, the absence of cost differences distinguishes this case from *Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996) (*Pasta from Italy*), where the Department accepted an additional physical characteristic as a matching criterion because it materially affected the cost of production.

The petitioners further contend that, contrary to Negromex's claim, ESBR produced according to a customer's specifications is not different from general-specification ESBR simply because a customer will reject ESBR not meeting its specifications. According to the petitioners, differences between customer-specific and general-specification ESBR are only due to varying ranges of refinement that different customers require within the same IISRP grade and are insufficient to create different products for purposes of model matching. The petitioners assert that Negromex misinterpreted section 771(16)(A) of the Act, defining ''identical'' merchandise, when it argued that ESBR products are not identical unless they have identical chemical contents rather than allowable ranges of content within a grade. According to the petitioners, the Department determined that steel products with different widths were still identical if they were within the same width range set out in the Department's matching criteria. *See Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Administrative Review*, 60 FR 65264, 65270 (December 19, 1995) (*Carbon Steel Germany*). The petitioners also assert that the Department has found that customer preferences should not be considered in determining identical merchandise. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18446 (April 15, 1997) (*Carbon Steel Korea*).

Negromex argues that it included additional product characteristics in response to the Department's questionnaire requesting inclusion of any characteristics relevant to identifying home market sales of identical merchandise. *See* Department's May 21, 1998, questionnaire at B6 and C6. Thus, Negromex asserts that its proposal for the inclusion of the five additional characteristics as matching criteria was timely and, furthermore, that the Department did not treat the information as untimely because the Department requested more information on those characteristics in the August 13, 1998, supplemental questionnaire and considered the inclusion of the characteristics as matching criteria for purposes of the preliminary determination.

According to Negromex, the Department's rejection of the five additional product characteristics in the preliminary determination resulted in all ESBR within an IISRP grade being treated as identical merchandise. Negromex asserts that such a result does not reflect commercial reality because each of the five additional product characteristics proposed by Negromex is essential in order to meet particular specifications of its customers. Negromex alleges that the record demonstrates that Negromex produces ESBR either according to general IISRP specifications or according to customers' proprietary specifications, and that its customers will reject merchandise if it does not meet specifications, even if the product meets the specifications of an IISRP grade. Negromex argues that the Department improperly treated proprietary-specification ESBR and general-specification ESBR as identical merchandise. Negromex contends that such a result is precluded by section 771(16)(A) of the Act and Department precedent that it is inconsistent to consider products sold according to different specifications as identical. *See Certain Cut-to-Length Carbon Steel Plate from Finland; Final Results of Antidumping Duty Administrative*

Review, 62 FR 18468, 18470–71 (April 15, 1997) (*Carbon Steel Finland*).

Negromex argues that, in order to compare only sales of physically identical merchandise, the Department's model matching criteria must incorporate all commercially significant physical characteristics of the products subject to investigation. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 63 FR 18879, 18881 (April 16, 1998) (*Lead and Bismuth*). Negromex further argues that Department precedent establishes that the creation of a product concordance relies on the matching of significant physical characteristics. *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, from Japan,* 62 FR 60472, 60475 (November 10, 1997) (*Roller Chain*).

Negromex asserts that physical characteristics, as opposed to production costs, govern the identification of identical merchandise. On that issue, Negromex alleges that the Department has held that a common production process with identical production costs may produce distinct products with differing physical characteristics. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72250 (December 31, 1998); *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 37334, 37335 (July 10, 1998) (*PET Film from Korea); Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, 31416 (June 9, 1998). Additionally, Negromex asserts that the Department has accepted the principle by treating off-specification ESBR and on-specification ESBR as non-identical products in the preliminary determination, even though Negromex shows the same costs for those two product types.

Negromex argues that the five additional product characteristics are commercially significant and should be included in the Department's model match because each characteristic is critical to the manufacture of ESBR, the sale of ESBR, and the use of ESBR by Negromex's customers. *See* Negromex's September 3, 1998, submission at page B22. In addition, Negromex states that the *Synthetic Rubber Manual,* included in the petition, recognizes both styrene content variance and mooney viscosity as important physical characteristics of ESBR. Furthermore, Negromex argues that the record in this case establishes that it sells ESBR as either ''off-specification,'' ''general (IISRP) specification,'' or ''proprietary specification,'' and that sales of proprietary-specification ESBR require it to produce several types of ESBR 1502 and 1712, which the Department verified. *See* December 22, 1998, Sales Verification Report at 10.

Negromex finally argues that the record shows that it must alter its production inputs and processes in order to meet customers' specifications, including specifications for the five proposed characteristics. In addition, Negromex asserts that the record shows that quality checks are made to ensure that a customer's specifications are met. All of this, Negromex urges, shows that the proposed five additional characteristics are commercially relevant and should be included by the Department's as model matching criteria for purposes of the final determination.

DOC Position

We agree with the petitioners that the addition of the five matching criteria proposed by Negromex (ash content, free soap content, styrene content variance, mooney viscosity variance, and vulcanization time tolerance) is not necessary to identify identical merchandise for model matching purposes in this case. As discussed in the preliminary determination, we determined that the ten product characteristics included in our questionnaire designate the IISRP ESBR grade and sufficiently defined identical products for matching purposes. *See* Preliminary Determination at 59522. After a review of Negromex's comments, we are not persuaded that their proposed criteria are necessary to appropriately match sales of subject merchandise in the United States with identical merchandise in the home market.

The Department has broad authority to determine model matching criteria and necessarily selects criteria on a case-by-case basis. The selection of appropriate matching criteria to define identical merchandise under section 771(16)(A) of the Act is based on meaningful physical characteristics and interested parties' comments. The Department does not attempt to account for every conceivable physical characteristic and may rely upon product standards when selecting matching criteria. The criteria selection process allows the Department to ''draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in the merchandise.'' *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Canada,* 63 FR 9182, 9197 (February 24, 1998) (*Wire Rod from Canada*). In this process, the Department matches products as ''identical,'' consistent with section 771(16)(A) of the Act, even though they may contain minor physical differences. *Wire Rod from Canada* at 9197. Additionally, the Department has determined that a range of products can be treated as identical within the meaning of section 771(16)(A) of the Act. *Carbon Steel Germany* at 65271 (where the Department determined that steel products falling within the same width and thickness ranges were identical); *see also Carbon Steel Korea* at 18446 (where the Department treated products with distinct paint coatings as identical and noted that products do not have to be ''technically substitutable, purchased by the same types of customers, or applied to the same end use'' in order to be treated as ''identical'' merchandise within the meaning of section 771(16)(A) of the Act (citation omitted)).

In order to determine ''meaningful physical characteristics'' for selection in identifying identical merchandise, the Department has looked to both price differences in the marketplace and cost differences that may reflect different production processes. In *Pasta from Italy,* the Department found an additional proposed matching criterion, wheat quality, to be ''commercially significant and an appropriate criterion for product matching'' after finding that differences in wheat quality were reflected in wheat costs and pasta prices. *Pasta from Italy* at 30346; *see also Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 62 FR 62547 (November 24, 1997) (where color was accepted as an appropriate matching criterion because it materially affected cost). However, costs are not always indicative of whether two products are identical, and we recognize that the same production process and costs can result in different products. For example, in *PET Film from Korea,* the Department found that the same costs and production process produced different products, but there the two products at issue were physically different grades of film of markedly different levels of quality and value. *PET Film from Korea* at 37335. Cases where the Department has found non-identical products with the same production process and costs usually involve seconds or other differences in

quality that affect value. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31416 (June 9, 1998) (where the Department found different grades of salmon from the same production process and with identical costs).

Even though product matching issues are decided on a case-by-case basis, we can take guidance from cases where the Department has addressed product matching issues involving products classified according to standardized grades. In such cases, the Department will typically match by grade, based on the appropriate physical characteristics describing the grade, but normally will not choose criteria to account for minor differences within a grade. For example, in *SSWR from Japan*, we selected the American Iron and Steel Institute (AISI) grade as a matching criterion in place of actual chemical content. In that case, we found that grade sufficiently defined the physical characteristics for matching purposes and decided that a type of steel with unique manufacturing processes was not a different product because the chemical content of that steel ''falls within the ranges of established standard AISI steel grades.'' *SSWR from Japan* at 40445; *see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40461 (July 29, 1998) (where the Department matched products as identical based on the grades of the product). However, where a product's characteristics are outside the permissible range of chemical content established by a defining grade or specification, we may reflect such a difference in our criteria if the difference is significant. In *SSWR from Japan*, we found that the respondents had appropriately reported their internal grades, in lieu of AISI grades, only when the chemical compositions of those internal products went beyond the range established by the standard AISI grade specifications. *SSWR from Japan* at 40436.

In this case, the ten matching criteria used by the Department in the preliminary determination, which are based on the IISRP standard grades, sufficiently take account of all the commercially meaningful physical characteristics for model matching. The five additional matching criteria proposed by Negromex are not necessary in this case to define identical products because they represent minor differences within ESBR grades. Rather, we find that the internationally-recognized grade classifications set forth by the IISRP provide an objective basis for appropriately distinguishing between different ESBR products.

We do not agree that subject merchandise produced according to proprietary specifications is a different product than merchandise produced according to Negromex's general specifications, which comport with an internationally-recognized IISRP standard grade. The record indicates that proprietary specifications only further refine the chemical ranges already defined by the general specifications for the ESBR grade. We found no cases where a customer's proprietary specifications for a characteristic went beyond the permissible range for that physical input (*e.g.*, styrene content variance) in Negromex's general specifications. The evidence on the record shows that proprietary-specification ESBR falls within permissible ranges for the percentage and variance of material inputs and finished product physical properties of general-specification ESBR. *See* Department's December 22, 1998, Sales Verification Report at verification exhibit 9; Department's February 2, 1999, Sales Verification Report at verification exhibit 10; and Negromex's June 18, 1998, submission at Exhibit 7. The facts on the record indicate that ESBR meeting a customer's proprietary specifications would also meet Negromex's general specifications. *See* December 22 Report at 10 and verification exhibit 9 and February 2 Report at verification exhibit 10.

We recognize that the exact measure of all chemical properties will differ among Negromex's various ESBR sales, even though ESBR with varying levels of those properties fall within one IISRP grade. The additional matching criteria proposed by Negromex would serve only to subdivide several ESBR sales falling within one IISRP standard grade into several ''different'' products for matching purposes. This would cause the Department to recognize ''different'' products based on the exactness of the chemical contents in customers' proprietary specifications, even though these chemical contents are within the range of the industry standard specification for a grade. Therefore, there is no reason to depart from the industry standard and accept criteria based on these minor differences reflected in customers' specifications.

We also disagree with Negromex that the ''significance'' of the additional criteria is undeniable based on the fact that its customers can reject merchandise for not meeting customer specifications (including the specifications for the proposed additional criteria). Although we recognize that customers can reject merchandise if it is not to their specifications, this fact, standing alone, is not a sufficient basis to determined that physical characteristics are ''commercially significant.''

Moreover, the proposed additional criteria are not meaningful physical characteristics because the minor differences that they represent within a grade have no cost effect. Negromex has reported the same cost for ESBR grade 1502, and the same cost for grade 1712, regardless of whether a particular sale of either grade is designated as general specification or proprietary specification. *See Pasta from Italy*. In addition, although, as discussed above, identical processes and costs may produce different products, such products are normally seconds or have a different quality level reflected in their value. While we have distinguished off-specification merchandise, *i.e.*, seconds, in our model matching, the record indicates that proprietary-specification ESBR is not a second and does not have a unique quality level demonstrated by a difference in value, and there are no cost differences. Therefore, we see no compelling reason to treat it as a different product. *See PET Film from Korea*.

Notably, Negromex has not argued any price differences for proprietary-specification ESBR that it alleges is a different product. As stated, a demonstration of price differences would have supported Negromex's argument that its additional criteria are meaningful physical characteristics. *See Pasta from Italy*.

Negromex asserts that *Roller Chain* supports acceptance of the additional matching criteria because they are ''commercially significant.'' Negromex's reliance on *Roller Chain*, however, is misplaced because that case did not involve industry product standards or making distinctions between products that meet one industry grade. Rather, it involved making distinctions between physically diverse products. The minor variations at issue here are merely variations within an industry grade and do not result in physically diverse products.

Negromex also relies on *Lead and Bismuth* in its argument. In *Lead and Bismuth*, the Department determined that the impurity level in the steel (*i.e.*, residual value) was a significant physical characteristic even though there were no cost differences. As already stated, we necessarily choose matching criteria on a case-by-case basis because of myriad different products in antidumping investigations. The steel product in *Lead and Bismuth* was

highly specialized and, as a result, we found that impurities were a significant characteristic in that case despite the lack of cost differences. In this case, the proposed criteria represent only minor differences within grade specifications and are not meaningful physical characteristics. As a result, our decision is not inconsistent with *Lead and Bismuth*.

Additionally, Negromex argues that the decision in *Carbon Steel Finland* supports acceptance of their proposed criteria. However, in that case, the Department made identical matches based on national specifications which are analogous to industry standards such as IISRP ESBR grades. *Carbon Steel Finland* at 18470. The Department did not match in that case based on customer-specific specifications. Thus, we are not persuaded that we should accept criteria for matching based on customers' proprietary specifications.

We note that, as discussed in the companion case to this investigation on ESBR from the Republic of Korea, the Department determined that an additional physical characteristic, mooney viscosity, should be added as a model matching criterion because, in that case, mooney viscosity was the sole physical property that distinguished ESBR grades 1502 and 1507. In this case, we do not need any of the five additional criteria, including mooney viscosity, to differentiate ESBR grades. We will add mooney viscosity as a model matching criterion, if necessary, in any future administrative review.

For the reasons stated above, we find that the ten matching criteria included in our questionnaire are sufficient to identify identical ESBR for matching purposes in this investigation.

Finally, we disagree with the petitioners that Negromex's proposal for the addition of five matching criteria was untimely. The Department's May 21, 1998, questionnaire states, ''[y]ou may add additional product characteristics.'' *See* the Department's May 21, 1998, questionnaire at pages B–6 and C–6. Negromex first provided information on the five proposed additional matching criteria in its July 13, 1998, response to the Department's questionnaire. As a result, Negromex's proposal for the addition of the five matching criteria was not untimely and was considered for purposes of the final determination in this investigation.

Comment 2: Negromex's Claim for a CEP Offset

Negromex asserts that there is no LOT in the home market comparable to the CEP level of trade and that the levels of trade in the home market are more advanced in the distribution chain than the CEP level of trade. Consequently, Negromex argues that the Department must grant a CEP offset under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

Negromex claims that the record establishes that the home market end user and distributor levels of trade each constitutes a more advanced LOT than the CEP level of trade. Negromex states that it sells directly to unaffiliated distributors and end users in the home market. Negromex also states that GIRSA resells to both unaffiliated distributors and unaffiliated end users in the United States. According to Negromex, its sales to GIRSA (CEP sales) must be at a less advanced market stage than home market sales because GIRSA resells to the same types of customers that Negromex sells directly to in the home market. Negromex asserts that sales in the home market to distributors or end users cannot be at the same LOT as sales to GIRSA (CEP sales) because GIRSA resells to distributors and end users.

Negromex also argues that verified information on the record establishes that the home market levels of trade are more advanced than the CEP level of trade. According to Negromex, there are eighteen separate selling functions performed in support of ESBR sales in the home market and in the United States. Negromex asserts that sixteen of those eighteen functions were performed in support of sales to unaffiliated distributors and all eighteen were performed in support of sales to end users. Negromex claims that its submissions, and the Department's verification reports, confirm its claims. Negromex next asserts that, in contrast, it performs only four of the eighteen selling functions in support of its sales to GIRSA. *See* Negromex's November 23, 1998, submission at Exhibit 6. The remainder of the selling functions, argues Negromex, are performed by GIRSA on behalf of its U.S. customers. For selling functions shared by Negromex and GIRSA (*i.e.*, technical services, application advice, advertising and sales promotion), Negromex claims that such functions are not performed on sales to GIRSA. Further, Negromex argues that its advertising expenses in the United States should not be included within the CEP selling functions because those expenses are attributable to U.S. economic activity. *See* section 772(d) of the Act and 19 CFR 351.402(b). Finally, Negromex asserts that technical service and application advice by Negromex is rare. Thus, because of the limited number of selling functions performed at the CEP level of trade and the greater number performed by Negromex in the home market, Negromex argues that both home market levels of trade are at a more advance stage of distribution than the CEP level of trade. As a result, Negromex asserts that section 773(a)(7)(B) of the Act requires that the Department grant a CEP offset in this investigation.

The petitioners argue that the Department properly denied Negromex a CEP offset in the preliminary determination and should continue to do so for purposes of the final determination. According to the petitioners, under section 773(a)(7)(B) of the Act, a CEP offset may be made only when two conditions are satisfied. First, NV must be established at a level of trade that is more advanced than the level of trade of the CEP. Second, the information available does not provide the Department with a basis to quantify a LOT adjustment. The petitioners argue that neither condition has been met and, thus, no CEP offset should be granted.

The petitioners assert that, in the preliminary determination, the Department properly concluded that home markets sales made at the unaffiliated distributor level of trade were comparable to U.S. sales at the CEP level of trade. As a result, the petitioners claim that the first statutory condition for a CEP offset has not been met because there is a comparable level of trade in the home market to the CEP level of trade. In addition, the petitioners argue that the second statutory condition for a CEP offset was not met because, according to the petitioners, there is sufficient data on the record to determine the basis for a LOT adjustment.

The petitioners argue that Negromex performs the same types of selling activities at the same quality and intensity for both home market sales to unaffiliated distributors and CEP sales. According to the petitioners, Negromex has tried to change this ''fact'' by downplaying the extent of its selling activities supporting its CEP sales. The petitioners assert that, in general, Negromex understates its selling functions in support of CEP sales by portraying selling functions performed by Negromex as selling functions performed by GIRSA. Regarding technical service support specifically, the petitioners allege that, even if GIRSA handles some routine technical questions, the most important technical support comes from experts in Mexico.

The petitioners further assert that, contrary to Negromex's argument, Negromex's affiliation with GIRSA does not preclude comparability between

those sales and sales to unaffiliated customers in the home market. According to the petitioners, the affiliation of a purchaser is not relevant to whether the same LOT can be found. In addition, the petitioners claim that Negromex has not demonstrated any real differences between the home market unaffiliated distributor LOT and the CEP LOT. The petitioners argue that the Department's regulations require, at the minimum, ''substantial differences'' in selling activities to find a different LOT. *See* 19 CFR 351.412(c)(2). In addition, the petitioners assert that the Department requires purchasers at different places in the distribution chain and sellers performing qualitatively or quantitatively different functions in selling to them to find a different LOT. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Carbon Steel South Africa*). According to the petitioners, Negromex has not shown that its purchasers in the home and U.S. markets occupy different places in the distribution chain, nor has Negromex shown substantially different selling functions between sales to unaffiliated distributors and sales to GIRSA. As a result, the petitioners urge the Department to continue to find that the same LOT exists in both markets.

DOC Position

We disagree with Negromex. As we stated in our preliminary determination, in accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also that of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Carbon Steel South Africa.*

Negromex requested a CEP offset prior to our preliminary determination in this investigation. *See* Negromex's June 18, 1998, response at A13. We examined Negromex's claim based on the analysis described above. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. *See* Department's October 28, 1998, Level of Trade Analysis Memorandum to the File from The Team through James Maeder. We found that ''one of the levels of trade in the home market, sales to unaffiliated distributors, was comparable to the CEP level of trade because of the similarities between the class of customer and distribution channel.'' Preliminary Determination at 59521. Negromex asserts that information placed on the record subsequent to the preliminary determination demonstrates that its home market sales were made at more advanced levels of trade than its sales to GIRSA. In light of the additional information on the record, we have revisited our LOT analysis.

We continue to find that Negromex sold to two levels of trade in the home market, the end user level of trade and the unaffiliated distributor level of trade. We find two distinct levels of trade in the home market because Negromex's sales to end users are at a more advanced stage in the chain of distribution and involve quantitatively and qualitatively more selling functions than its sales to unaffiliated distributors. In addition, we continue to find that Negromex's home market sales to unaffiliated distributors are made at a level of trade comparable to the CEP level of trade. Although Negromex may perform nominally more selling functions in support of its sales to the unaffiliated distributor LOT than it does in support of its sales to the CEP LOT, we are not persuaded that these differences in selling functions are so substantial as to result in two distinct levels of trade.

Differences in selling activities do not require us to find two distinct levels of trade. *See, e.g., Carbon Steel South Africa* at 61732 (where the Department found that differences in selling functions, even substantial differences, do not alone sufficiently establish a difference in the level of trade); *see also* 19 CFR 351.412(c)(2) (''substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing'').

In reexamining this issue, we find that both Negromex's unaffiliated distributors and GIRSA are resellers of ESBR to unaffiliated end users and both occupy the same place along the chain of distribution. In fact, Negromex stated that GIRSA ''is akin to that of a master distributor.'' Negromex's June 18, 1998, response at A18. Thus, we disagree with Negromex's argument that its sales to GIRSA are at a less advanced marketing stage because GIRSA, in turn, sells to the same types of customers as Negromex. Moreover, both Negromex's home market distributors and GIRSA provide significant services to their ESBR customers and both function at the same place in the chain of distribution for sales of ESBR in their respective markets.

Regarding the selling functions performed in support of Negromex's home market and CEP sales, for purposes of the preliminary determination, we found that Negromex performed analogous levels of selling functions in support of its home market sales to unaffiliated distributors and its CEP sales to GIRSA. *See* Preliminary Determination at 59521; *see also* the Department's October 28, 1998, Level of Trade Analysis Memorandum to the File through James Maeder. Our analysis of selling functions, both for the preliminary determination and for the final determination, focused specifically on home market sales to unaffiliated distributors for comparison to CEP sales. Negromex's arguments that its home market selling functions are not comparable to its CEP selling functions did not clearly distinguish between selling functions in support of sales to unaffiliated distributors as opposed to selling functions in support of sales to end users. In its case brief, Negromex argues that the levels of trade are not comparable ''[w]hen the very limited number of selling functions performed by Negromex at the CEP level of trade on its sales to GIRSA, Inc. are compared to the full range of selling functions performed by Negromex on its sales to unaffiliated endusers and unaffiliated distributors in the home market.'' Negromex's February 10, 1999, Case Brief at 29. Selling functions performed in support of sales to end users,

however, are not relevant to our comparisons between the unaffiliated distributor LOT and the CEP LOT. We have focused our analysis on a comparison between the unaffiliated distributor LOT and the CEP level of trade.

Negromex reported revised selling functions information in its November 23, 1998, submission. The revised selling functions information differed from the information relied on for the preliminary determination (*see* Negromex's June 18, 1998, Section A response at Exhibit A–5) in two significant ways. First, in its November 23 submission, Negromex reports either ''Yes'' or ''No'' for a selling function, rather than the degree of a selling function (i.e., High, Medium, Low) as it had for some selling functions in its Section A response. Second, in its latter submission, Negromex reports eighteen selling functions instead of the eight reported in its Section A response. *See* Negromex's November 23, 1998, submission at pages 7–12 and Exhibit 6. We find, however, that, of the ten ''additional'' selling functions reported by Negromex, six out of the ten merely reflect subdivisions of selling functions already reported by Negromex in its June 18 response. For example, the ''Inventory Maintenance'' selling function originally reported became ''Immediate Post Production Storage'' and ''Inventory Maintenance at Negromex Facilities.''

Negromex argues that it performs fourteen selling functions in support of unaffiliated distributor sales but only four selling functions in support of CEP sales. However, our analysis of the information on the record indicates that the numerical disparity in the selling functions has been substantially overstated. For example, Negromex reports that it performs inventory maintenance at its facilities for sales to distributors, but not for sales to GIRSA. However, the Department learned at verification that ''Negromex provides inventory maintenance at its plant for U.S. sales.'' Department's December 22, 1998, Sales Verification Report at 7–8. In addition, we found at verification that Negromex also performs technical service and application support functions from Mexico for its U.S. sales. *See* Department's February 2, 1999, Sales Verification Report at 7. As stated, a substantial difference in selling functions, *inter alia*, must exist in order for the Department to find a different LOT; a difference in the number of selling functions alone is not sufficient. Although there are some differences in selling functions between sales to distributors and sales to GIRSA, the differences are not substantial. For example, the degree of the selling function labeled ''Collection,'' performed for distributors, was originally reported as ''Low'' and subsequently has been reported as ''Yes.'' Negromex reports this as ''No'' for sales to GIRSA and relies on this as one of the differences between the selling functions, but we find that a small difference in collection levels is not a significant difference in selling activities. At verification, Negromex provided no evidence of substantial differences in these selling functions.

Finally, the four new selling functions claimed by Negromex (credit analysis, sales administration, post-sale customer service, and contract/purchase order negotiation), reported as performed in support of sales to distributors but not to GIRSA, are not significant selling activities and Negromex has not supplied any information to indicate otherwise.

We find that Negromex's sales to unaffiliated distributors in the home market and to GIRSA in the United States are made at the same point in the chain of distribution and involve selling functions that are not substantially different. As a result, we continue to find that the unaffiliated distributor LOT in the home market is comparable to the CEP level of trade. Consequently, we made a LOT adjustment if we compared sales in the United States to sales at the end user LOT in the home market based on the established pattern of price differences between the two levels of trade in the home market. Because we matched sales at the comparable home market LOT and made a LOT adjustment, if necessary, we did not make a CEP offset to NV.

Comment 3: Date of Sale for Long-Term Contracts

As found in the preliminary determination, Negromex's affiliated U.S. importer, GIRSA, sold ESBR during the POI to one U.S. customer under two long-term contracts. The terms of each year-long contract provided that the U.S. customer was obligated to purchase a minimum amount of ESBR during the contract's year-long duration. Prices for the minimum required annual quantities were established in the contracts based on a mathematical formula incorporating the published monthly monomer prices and prices of butadiene and styrene, two major inputs of ESBR.

Although Negromex originally acknowledged that these were long-term contracts and thus reported the contract date as the date of sale for the two contracts at issue, Negromex now argues that the Department should not use the contract date as the date of sale, but refers to these contracts as ''consignment inventory contracts'' and argues that these are not long-term contracts, but rather monthly sales based on the consignment terms of the contracts. Negromex contends that the Department's practice regarding consignment sales is to treat the date on which the customer withdraws inventory from consignment as the date of sale. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 62 FR 16763, 16767 (April 8, 1997) (*Ferrosilicon from Brazil*); *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68870 (December 29, 1993) (*Rods from France*). Under the contract terms, a monthly quantity (1/12th of the annual minimum quantity requirement) was set to be purchased and withdrawn from consignment with an allowable variance of plus or minus twenty percent each month. According to Negromex, the Department's precedent regarding consignment contracts should be followed in this case because the quantity under the contracts was not fixed on the dates of contract but on the dates when the customer removed merchandise from its consignment inventory. Negromex imputes the fifteenth of each month as the average date for all of the U.S. customer's withdrawals from consignment during every month and urges the Department to adopt the fifteenth of each POI month as the dates of sale for each of the contracts at issue.

Alternatively, if the Department determines that the date of sale was not governed by the contracts' monthly consignment inventory terms, Negromex argues that the Department should use the invoice dates as the dates of sale. Because GIRSA's U.S. customer often failed to meet the contracts' monthly purchase requirements, Negromex asserts that the contract date did not establish the quantity term and thus it was not a long-term contract. Therefore, according to Negromex, the contract date should not be used as the date of sale. In support of its position, Negromex references a case in which, because the customer's monthly purchases exceeded the contract's monthly quantity requirements, the Department determined that the date of sale was the invoice date. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative*

Review, 63 FR 55578 (October 16, 1998) (*Tubes from Thailand*).

The petitioners urge the Department to continue to use the contract date as the date of sale for the two long-term contracts. In support of their position, the petitioners refer to the Department's statutory provisions which allow the Secretary to choose a date other than invoice date as the date of sale when another date more accurately reflects the final determination of a sale's material terms by an exporter or producer. *See* 19 CFR 351.402. The petitioners assert that the Department should use the contract date as the date of sale because that was the date on which the parties legally bound themselves to the essential terms of sale, i.e., price and quantity.

The petitioners assert that the Department's policy in deciding date of sale for long-term contracts with minimum quantity requirements has been to recognize the contract date as the date of sale for all merchandise sold up to the minimum quantity requirement. *See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan,* 56 FR 12156 (March 22, 1991); *Titanium Sponge From Japan: Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part,* 54 FR 13403, 13404 (April 3, 1989). *See also Toho Titanium Co., Ltd.* v. *U.S.,* 743 F. Supp. 888, 890–91 (CIT 1990). The petitioners argue that Negromex recognized that these were long-term contracts and therefore properly included sales made under the two long-term contracts invoiced after the POI in its response to the Department's Section C questionnaire. *See* Negromex's July 13, 1998, response at C14–C15.

According to the petitioners, *Tubes from Thailand* is unpersuasive because the facts of that case involved neither a long-term contract nor a minimum quantity requirement. Similarly, the petitioners assert that cases cited by Negromex dealing with consignment sales contracts are also irrelevant in this case because those cases did not involve long-term contracts with minimum quantity requirements, but rather were merely sales made on consignment. *See Ferrosilicon from Brazil; Rods from France*. The petitioners conclude that Negromex was unable to demonstrate why the Department should deviate from its practice of using contract date as the date of sale for long-term contracts and argue that the Department should continue using the contract date as the date of sale in this case.

DOC Position

We disagree with Negromex. As discussed in the preliminary determination, we followed our practice of using contract dates as the dates of sale for these two U.S. long-term contracts because we determined that price and quantity were fixed on the contract dates. We are not persuaded by Negromex's arguments that the quantity terms in the two contracts were not fixed and, consequently, these are not long-term contracts. Therefore, the average day of release from consignment each month is not the appropriate date of sale for sales under the two contracts.

Pursuant to 19 CFR 351.401(i), the date of sale is normally the date of invoice unless satisfactory evidence is presented that the material terms of sale, price and quantity, are established on some other date. *See also Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14067 (March 29, 1996). The Department has determined that a long-term contract's price term is fixed if it is established by a published source outside of the control of either party to the contract, such that there is nothing more that the parties need to negotiate concerning the price of the goods sold. *See Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip From France,* 52 FR 812, 814 (January 9, 1987). In addition, the Department has determined that, for a long-term contract with a minimum quantity requirement, the contract date is the date of sale for the minimum quantity specified in the contract. However, for situations in which a customer has not yet agreed to purchase quantities above the minimum requirement, the Department will use the date of invoice (or other appropriate date) as the date of sale for all amounts sold in excess of the minimum requirement. *See Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part*, 54 FR 13403, 13404 (April 3, 1989); *see also Toho Titanium Co., Ltd.* v. *U.S.*, 743 F. Supp. 888, 890–91 (CIT 1990).

Because the price terms of the long-term contracts in this investigation were based on a set formula of published monthly prices for major inputs which were outside either contracting party's control, we continue to find that the price was fixed on the contract dates. It was on the dates of contract, therefore, that Negromex, as the price discriminator, set the prices for these sales. Moreover, we are also unpersuaded that the minimum quantity was not fixed at the time of the contracts. Negromex points to the fact that the contracts indicate 1/12th of the annual quantity is to be purchased each month, with an acceptable variance of plus or minus twenty percent. However, although monthly quantities to be withdrawn under the year-long contracts deviated more than twenty percent for some months, the annual quantities set by the contracts were not subject to any variation and the full amount was required to be purchased during the contract year. Thus, the fact that any minimum monthly amount was not withdrawn from inventory does not negate the fact that the annual quantity term was fixed by the parties on the contract date, regardless of the actual terms of delivery thereafter. We disagree with Negromex that these are ''consignment inventory contracts,'' and find that the monthly withdrawal terms are merely delivery terms which provide stability for both parties throughout the duration of these long-term contracts.

Moreover, Negromex's attempt to equate the types of consignment sales found in *Ferrosilicon from Brazil* and *Rods from France* is without merit given our facts because those cases did not deal with long-term contracts with established fixed minimum annual quantity requirements, but were merely sales from consignment, as pointed out by the petitioners. Finally, regarding Negromex's alternative argument if the Department does not find these to be merely consignment sales, *Tubes from Thailand* did not deal with a long-term contract, and the short-term contract at issue did not actually fix the quantity term. Thus, the Department appropriately used the invoice date as the date of sale in that case. Based on the evidence before us, we are not persuaded to change our practice on the date of sale issue in this case and, thus, have continued to use the contract dates as the dates of sale for the minimum quantity requirements of the two U.S. long-term contracts. However, as in the preliminary determination, for any quantity sold above the minimum contract requirements, we used the reported average day of withdrawal from consignment (the fifteenth day of the month preceding the invoice date) as the date of sale.

Comment 4: Calculation of Negromex's U.S. Indirect Selling Expense Factor

The petitioners contend that the Department should adjust GIRSA's indirect selling expense allocation because the Department was unable to verify GIRSA's allocation of indirect expenses between subject and non-subject merchandise. The petitioners

urge the Department to reallocate GIRSA's indirect selling expenses in accordance with the petitioners' calculation methodology as provided in their February 17, 1999, rebuttal brief.

Negromex contends that it correctly allocated the indirect selling expenses of GIRSA and that the Department should continue to use the reported allocation of indirect selling expenses in the final margin calculation. In its response, Negromex allocated GIRSA's indirect selling expenses among sales of all rubber products, including ESBR and non-subject merchandise. *See* Department's February 2, 1999, Sales Verification Report at 13. Negromex asserts that it correctly allocated GIRSA's indirect selling expenses attributable to all rubber sales based on GIRSA's accounting records and that the Department should not reallocate these indirect selling expenses.

DOC Position

We agree with the petitioners that we should reallocate Negromex's indirect selling expenses. At verification, GIRSA did not provide documentation supporting its allocation of indirect selling expenses. For example, GIRSA was unable to justify its allocation of all supplies and furniture depreciation expenses to sales of rubber products, including ESBR, and it could not support its allocation of no indirect selling expenses to certain non-subject merchandise. *See* Department's February 2, 1999, Sales Verification Report at 13. Therefore, because GIRSA was unable to substantiate its indirect selling expense allocation between rubber products and non-subject merchandise, we reallocated the total amount of indirect selling expenses for all GIRSA products over the total amount of GIRSA's POI sales for all products. *See* Department's February 2, 1999, Sales Verification Report at 14; *see also* Department's March 19, 1999, Final Determination Calculation Memorandum.

We note that the petitioners, in their rebuttal brief, recalculated GIRSA's indirect selling expense allocation using the same methodology as outlined by the Department in its verification report. However, upon reviewing the petitioners' calculation, we found clerical errors. Accordingly, we did not adopt the calculation provided by the petitioners. Instead, we applied the amount as calculated in our verification report. *See* Department's February 2, 1999, Sales Verification Report at 15.

Comment 5: Adjusting Normal Value for Export Rebates

Negromex grants rebates on ESBR sales to home market customers who incorporate the purchased ESBR into exported non-subject merchandise. Negromex's ESBR customers certify amounts of ESBR used in their exported finished goods, calculate their respective ESBR rebates, and submit rebate documentation for Negromex's approval. *See* Department's December 22, 1999, Sales Verification Report at 17. After approving a customer's export rebate calculation, Negromex applies an export rebate to the customer's next invoice and issues a credit note for the rebate upon the customer's request. *See* Department's December 22, 1999, Sales Verification Report at 17; *see also* Negromex's September 3, 1998, response at Exhibit SB–8.

The petitioners argue that the Department should not deduct these rebates from normal value, arguing that to do so would wrongly encourage ''input dumping,'' a practice which promotes lower export prices in that raw material suppliers charge their customers less for raw materials incorporated into exported products. *See* Petitioners' February 10, 1999, Case Brief at 11. In this case, the petitioners assert that because Negromex's export rebates provide Negromex's customers opportunities to sell their goods at prices lower in foreign markets than in the Mexican market, the Department should follow its practice of denying price adjustments for export rebates, as the Department views these rebates as ''input dumping.'' *See Notice of Final Determination of Sales at Less than Fair Value: Open-End Spun Rayon Singles Yarn from Austria*, 62 FR 43701, 43708 (Aug. 15, 1997) (*Rayon Singles Yarn*); *Final Results of Antidumping Duty Administrative Review: Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan*, 56 FR 26382, 26383 (June 7, 1991) (*Carbon Steel Tubing Taiwan*).

Negromex asserts that the Department correctly adjusted normal value for the export rebates which Negromex grants its customers who incorporate ESBR into their exported products. According to Negromex, the petitioners are mistaken in analogizing their export rebates to ''input dumping'' because the Department has only applied the ''input dumping'' principle to deny a manufacturer's claim to normal value adjustments for export rebates it receives from suppliers. The Act, argues Negromex, mandates an adjustment of normal value for all price adjustments, including export-based rebates, in order to correctly compare normal value with prices at which ESBR is first sold in the United States. *See* Section 773(a)(1)(B) of the Act. Negromex notes that the Department has upheld adjustments for similar export-based rebates in recent decisions and maintains that the Department should follow its precedent of allowing export rebates in this case. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*: *Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33045–46 (June 17, 1998) (*Tube from Mexico*).

DOC Position

We agree with Negromex. Section 773(a)(1)(B)(i) of the Act requires the Department to calculate normal value in a manner which most closely approximates ''the price at which the foreign like product is first sold * * * for consumption in the exporting country. * * *'' In order to accurately reflect the foreign like product's price, the Department must account for all price adjustments in calculating the home market product's normal value. *See* 19 CFR 351.401(c). Because rebates affect the price of subject merchandise in the home market, we agree that the export rebates should be deducted in the calculation of Negromex's normal value price in this case. *See* 19 CFR 351.401.

The petitioners' application of the ''input dumping'' concept to the circumstances of this case is misplaced. The Department has acknowledged that the practice by which raw materials suppliers price their raw materials differently based on whether customers incorporate the raw material into domestic or export products constitutes ''input dumping.'' *Carbon Steel Tubing Taiwan* at 26383. The Department's policy consistently has been to deny finished goods manufacturers an adjustment to normal value for export rebates received from upstream raw material suppliers. *Carbon Steel Tubing Taiwan* at 26383; *Rayon Singles Yarn* at 43708. The issue facing the Department in this case, however, is not a finished goods manufacturer's claim for an adjustment to NV for export rebates granted by its raw material supplier. Instead, Negromex is claiming an adjustment to NV for an export rebate granted to its home market customers. Therefore, in keeping with our policy to allow respondents an adjustment to normal value for export rebates granted to downstream customers who incorporate the material into their exported products (*see Tube from Mexico* at 33045–46), for purposes of the final determination, we have continued

to adjust for export rebates in our calculation of normal value.

Comment 6: Gains and Losses on Monetary Position

Negromex contends that the Department should include the full amount of reported net gain on monetary position in its calculation of financial expenses. Negromex explains that these adjustments reflect the gain on holding net monetary liabilities against reduction in the value of the peso. According to Negromex, these inflation adjustments are required by Mexican generally accepted accounting principles (GAAP), and the Department's practice in Mexican cases is to include these adjustments in the calculation of financial expenses. *See Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17160 (April 9, 1997) (*Cement from Mexico*).

The petitioners did not comment on this issue.

DOC Position

We agree with Negromex, in part. We agree that the gain on monetary position should be included in the financial expense calculation, but we disagree that it should be included in full. In accordance with section 773(f)(1)(A) of the Act, the Department's practice is to rely on costs derived from the respondent's books and records, as long as they: (1) Are prepared in accordance with the home country's generally accepted accounting principles (''GAAP''); (2) are based on allocations that have been historically used by the company; and (3) do not result in distorted production costs. Negromex has historically computed a net gain or loss on monetary position for financial reporting purposes in accordance with Mexican GAAP. This gain or loss reflects the impact of Mexican inflation during the year on holding monetary assets and liabilities.

In this instance, due to the inflation experienced in Mexico during the POI, we consider it reasonable to include in the interest expense computation the impact of holding monetary assets and liabilities throughout the year. Even though Negromex normally computes its net gain or loss on monetary position using all monetary assets and liabilities (both current and long-term), we computed the net gain amount using only Negromex's current monetary assets and liabilities. The gain on monetary position and the foreign exchange loss, in this case, are directly linked. That is, the same foreign-denominated debt caused both a foreign exchange loss and a gain on monetary position. The foreign exchange loss is driven by the devaluation of the peso as compared to other currencies whereas the gain on monetary position is driven by high inflation during the year. Consistent with our current practice of including in the interest expense calculation only a portion of the foreign exchange gains and losses related to foreign-denominated debt (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934, 8940 (February 23, 1998)), we only included a portion of the gain on monetary position related to Negromex's monetary assets and liabilities.

Our preferred method for computing the portion of foreign exchange gains and losses related to debt is to amortize the gains or losses over the remaining life of the foreign-denominated loans. Alternatively, the Department may, as was done in this case, determine the portion of the exchange gains or losses to include in the financing expense computation based on the ratio of the current portion of the foreign-denominated debt to total foreign denominated-debt, provided that it reasonably approximates the result of using the remaining life of the debt. *See Wire Rod from Canada* at 9187. Following this approach, we consider it appropriate to include in the net monetary gain or loss computation only those asset and liability amounts classified as current. To only include the current portion of the foreign exchange gains or losses related to debt but to include the entire gain or loss on monetary position would be unreasonable and distortive. We note that, in *Cement from Mexico*, we used both current and long-term monetary assets and liabilities to compute the gain on monetary position. However, we also included the foreign exchange gains and losses on both the current and long-term foreign denominated debt. Our practice has developed since that case in that we now only include a portion of the foreign exchange gains and losses related to foreign-denominated debt and thus we will only include a comparable portion of the gains or losses on monetary position.

Comment 7: Purchase of Styrene From an Affiliated Party

At verification, the Department discovered that Negromex purchased styrene, a major input in the production of ESBR, from an affiliated party, Resirene S.A. de C.V. (Resirene). This information was not reported to the Department in the company's questionnaire responses. The petitioners argue that Negromex failed to make timely disclosure of its purchases of styrene from Resirene, denying the Department and the petitioners a reasonable opportunity to analyze and address the costs of this input. The petitioners, citing to 19 CFR 351.407(b) (the major input rule), point out that, in dealing with transactions between affiliated companies, it is the Department's practice to value major inputs at the highest of the transfer price, market price, or actual production cost. However, the petitioners contend, lack of verifiable evidence from Negromex in this instance precludes an application of the major input rule.

According to the petitioners, the Department's attempt at verification to examine the nature of Negromex's transaction with Resirene and test the transfer price between the two companies does not establish an adequate basis for application of the major input rule. Specifically, the petitioners claim that the Department relied primarily upon oral explanations by Negromex's materials manager and faxed documents from Resirene (*i.e.*, Resirene's financial statements and a schedule of its purchases of styrene from unaffiliated suppliers during the POI). The petitioners note that the Department did not speak to anyone at Resirene and did not inspect any original documentation at that company, rendering the faxed documents obtained at verification unverified.

Furthermore, the petitioners assert that the transfer price between Negromex and Resirene, which according to Negromex's official represents Resirene's purchase price and cost of freight, does not cover Resirene's entire cost of obtaining the material, such as general and administrative expenses. Absent verified data concerning Resirene's full cost of purchasing styrene, the petitioners argue that Negromex's reported costs of styrene cannot be analyzed properly under the major input rule. Therefore, the petitioners urge the Department to use facts otherwise available in determining Negromex's costs of styrene for purposes of the final determination.

Negromex contends that it properly reported its styrene costs in its questionnaire response. Negromex notes that the cost of styrene recorded in the company's accounting system and included in the COP and CV data reported to the Department consists of two items: (1) The costs of styrene purchased from an unaffiliated company; and (2) the costs of styrene

purchased from its affiliate, Resirene. Negromex explains that it engages in a joint purchasing arrangement with Resirene under which Resirene purchases styrene from unaffiliated suppliers and resells it to Negromex. According to Negromex, Resirene's sales of styrene to Negromex are not included in Resirene's total sales and the costs are not included in the company's cost of sales, as they are merely pass-through transactions. Accordingly, Negromex contends that it would be inappropriate to include G&A expenses of Resirene to Negromex's purchases of styrene from Resirene.

DOC Position

We agree with the petitioners. In Section D of the Department's questionnaire, we instructed Negromex to identify inputs that the company receives from affiliated parties. *See* the Department's May 21, 1998, questionnaire at D–3. In its questionnaire response, Negromex stated that ''[a]ll raw materials, service (water, electricity, and natural gas) and subcontractor inputs are purchased from non-affiliated parties. There were no purchases of any inputs used in the production or manufacture of ESBR 1502 or 1712 from affiliated parties'' *See* Negromex's September 22, 1998, Section D response at D6. However, as noted above, we found at verification that Negromex purchased a portion of styrene used in the production of ESBR from Resirene.

Section 773(f)(3) of the Act provides that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on cost of production if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2). Under this provision, the Department is required to review purchases from affiliated parties of major inputs in order to determine that they reasonably reflect a fair market value. In this instance, Negromex failed to provide information regarding its purchases of styrene from Resirene in its questionnaire responses, thus precluding the Department from adequately addressing this issue prior to verification. Furthermore, at verification, the information Negromex presented to the Department was insufficient to verify that Negromex's purchases of styrene from Resirene were at fair market value. Specifically, we were unable to review source documentation substantiating Negromex's claim that its styrene purchases from Resirene are merely ''pass-through'' transactions.

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(d) and (e), use facts otherwise available in reaching the applicable determination. In addition, section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information.

As detailed above, Negromex withheld information concerning its purchases of styrene from an affiliated party in its questionnaire responses. Moreover, Negromex did not disclose this information at the start of verification, but rather it was discovered by the Department during verification, as described in the verification report. *See* Department's January 6, 1999, Cost Verification Report at 4. Under these circumstances, we were unable to obtain sufficient information needed to apply the major input rule, because, as described above, the information provided about Resirene at verification was not verified. Thus, we determine that use of partial facts available is appropriate in valuing the cost of styrene in our calculation of cost of production and constructed value. Furthermore, because Negromex failed to comply with the Department's request for information regarding purchases of inputs from affiliated parties, we find that it failed to cooperate to the best of its ability in providing this information, and therefore, adverse inferences are warranted. This is consistent with the Department's practice of applying adverse facts available when certain requested information is withheld by an interested party in its questionnaire response, but discovered at verification. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56620 (October 22, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40396 (July 29, 1998). As facts available, we adjusted Negromex's reported direct materials cost by increasing the cost of the portion of styrene purchased from Resirene by the amount of Resirene's G&A expenses as computed from the company's 1997 financial statements. *See* Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Memorandum, dated March 19, 1999.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ESBR from Mexico that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted average margin percentage
Negromex	33.01
All Others	33.01

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO)

of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7527 Filed 3–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–406]

Certain Agricultural Tillage Tools From Brazil; Rescission of Countervailing Duty Administrative Review

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

ACTION: Notice of rescission of countervailing duty administrative review.

SUMMARY: On November 30, 1998 (63 FR 65748), in response to a request from Marchesan Implementos e Máquinas Argícolas (''Marchesan'') (respondent), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil, for the period January 1, 1997 through December 31, 1997. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the respondent has withdrawn the request for review.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, (202) 482–3692, or Tipten Troidl, (202) 482–1767, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Background

On October 29, 1998, the Department received a request to conduct an administrative review of the countervailing duty order from the respondent for the period January 1, 1997, through December 31, 1997. No other interested party requested a review of this countervailing duty order. On November 30, 1998, the Department published in the **Federal Register** (63 FR 65748) a notice of ''Initiation of Countervailing Duty Administrative Review'' initiating the administrative review of the respondent for that period. On March 1, 1999, respondent withdrew the request for review.

Section 19 CFR 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, respondent has withdrawn the request for review within the 90-day period. No other interested party requested a review and we have received no other submissions regarding respondent's withdrawal of the request for review. Therefore, we are rescinding the review of the countervailing duty order on certain agricultural tillage tools from Brazil.

This notice is published in accordance with section 751 of the Act and section 19 CFR 351.213(d)(1).

Dated: March 19, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II.

[FR Doc. 99–7520 Filed 3–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–404]

Live Swine From Canada: Extension of Time Limit for Preliminary Results of Five-Year Review

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

ACTION: Notice of extension of time limit for preliminary results of five-year (''sunset'') review

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the sunset review on the countervailing duty order on live swine from Canada. Based on adequate responses from domestic and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this extension, the Department intends to issue its preliminary results not later than June 21, 1999.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset review of the countervailing duty order on live swine from Canada is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of this review until not later than June 21, 1999, in accordance with section 751(c)(5)(B) of the Act. The final results of this review will, therefore, be due not later than October 28, 1999.

Dated: March 22, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7524 Filed 3–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110298A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat Generic Amendment to the Fishery Management Plans of the U.S. Caribbean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the partial approval of the Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean (Generic EFH