

**DEPARTMENT OF COMMERCE****International Trade Administration  
[A-421-807]****Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests from Nucor Corporation, International Steel Group Inc. (ISG) and United States Steel Corporation (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands (A-421-807). This administrative review covers imports of subject merchandise from Corus Staal BV (Corus Staal). The period of review is November 1, 2002 through October 31, 2003.

We preliminarily determine that sales of hot-rolled steel from the Netherlands in the United States have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

**DATES: Effective Date:** December 3, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Background**

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel flat products from the Netherlands. See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 59565 (November 29, 2001). On November 3,

2003, the Department published the opportunity to request administrative review of, *inter alia*, hot-rolled steel from the Netherlands for the period November 1, 2002 through October 31, 2003. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 62279 (November 3, 2003).

In accordance with 19 CFR 351.213(b)(1), on November 26 and 28, 2003,<sup>1</sup> petitioners requested that we conduct an administrative review of sales of the subject merchandise made by Corus Staal. On December 24, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2002 through October 31, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 74550 (December 24, 2003).

On December 29, 2003, the Department issued its antidumping duty questionnaire to Corus Staal. Corus Staal submitted its response to sections A, B, C, D, and E of the questionnaire on February 18, 2004.

On January 23, 2004, petitioner, United States Steel Corporation, requested the Department determine whether antidumping duties have been absorbed during the period of review by the respondent Corus Staal. On February 19, 2004, the Department issued a letter inviting Corus Staal to submit on the record evidence that unaffiliated purchasers will pay the antidumping duties that may be assessed on entries during the period of review. On March 5, 2004, Corus Staal submitted its response to the Department's letter.

On February 18, 2004, Corus Staal requested the Department to excuse certain affiliates, Corus Service Center Maastricht (Feijen), Corus Vlietonge BV, Ijzerleeuw BV and Geertsema Staal BV, from reporting home market sales. On April 2, 2004, the Department responded affirmatively to the request not to report downstream home market sales by these four companies.

On March 18, 2004, the Department issued a supplemental section A questionnaire, to which Corus Staal responded on April 1, 2004. On April 2, 2004, the Department issued a supplemental section B and C questionnaire. Corus Staal submitted its supplemental section B and C response

on April 21, 2004. On May 4, 2004, the Department issued a second section A supplemental questionnaire, to which Corus Staal responded on May 13, 2004. On May 18, 2004, the Department issued a verification agenda for a verification visit to Corus Steel USA Inc.'s (CSUSA) offices in Schaumburg, Illinois USA. On May 24, 2004, the Department issued a section D and E supplemental questionnaire, to which Corus Staal filed a response on June 21, 2004. On May 26, 2004, Corus Staal filed quantity and value reconciliations as requested in section A of the questionnaire.

On May 27, 2004, petitioners filed comments concerning the verification of CSUSA, which was conducted in Schaumburg, Illinois from June 2 to June 3, 2004. The verification report was issued on July 13, 2004. On June 10, 2004, the Department issued a second supplemental section C questionnaire, to which Corus Staal filed a response on June 24, 2004. On July 6, 2004, United States Steel Corporation filed comments concerning the preliminary results, to which Corus Staal responded on July 16, 2004.

Because it was not practicable to complete this review within the normal time frame, on July 15, 2004, we published in the **Federal Register** our notice of extension of time limit for this review. See *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit*, July 15, 2004 (69 FR 42418-42419). This extension established the deadline for these preliminary results as November 29, 2004.

**Period of Review**

The POR is November 1, 2002, through October 31, 2003.

**Scope of the Review**

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 millimeters (mm) and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without

<sup>1</sup> Nucor and (ISG) filed their requests for administrative reviews on November 26, 2003, while United States Steel Corporation filed its request for review on November 28, 2003.

patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order.

Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).

Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.

Ball bearings steels, as defined in the HTS.

Tool steels, as defined in the HTS.

Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

ASTM specifications A710 and A736.

USS Abrasion-resistant steels (USS AR 400, USS AR 500).

All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings:

- 7208.10.15.00, 7208.10.30.00,
- 7208.10.60.00, 7208.25.30.00,
- 7208.25.60.00, 7208.26.00.30,
- 7208.26.00.60, 7208.27.00.30,
- 7208.27.00.60, 7208.36.00.30,
- 7208.36.00.60, 7208.37.00.30,
- 7208.37.00.60, 7208.38.00.15,
- 7208.38.00.30, 7208.38.00.90,
- 7208.39.00.15, 7208.39.00.30,
- 7208.39.00.90, 7208.40.60.30,
- 7208.40.60.60, 7208.53.00.00,
- 7208.54.00.00, 7208.90.00.00,
- 7211.14.00.90, 7211.19.15.00,
- 7211.19.20.00, 7211.19.30.00,
- 7211.19.45.00, 7211.19.60.00,
- 7211.19.75.30, 7211.19.75.60, and
- 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers:

- 7225.11.00.00, 7225.19.00.00,
- 7225.30.30.50, 7225.30.70.00,
- 7225.40.70.00, 7225.99.00.90,
- 7226.11.10.00, 7226.11.90.30,
- 7226.11.90.60, 7226.19.10.00,
- 7226.19.90.00, 7226.91.50.00,
- 7226.91.70.00, 7226.91.80.00, and
- 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00,

- 7210.90.90.00, 7211.14.00.30,
- 7212.40.10.00, 7212.40.50.00, and
- 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Verification

The Department verified the information reported by Corus Staal for CSUSA's offices in Schaumburg, Illinois from June 2 through June 3, 2004. The results of this verification are found in the verification report dated July 13, 2004, on file in the Central Records Unit of the Department in room B-099 of the main Commerce building.

#### Affiliated-Party Sales Issues

During the period of review (POR), Corus Staal sold the foreign like product to several affiliated resellers in the home market. These include Namascor BV (Namascor), a service center wholly

owned by Corus Staal, and Laura Metaal BV (Laura), a manufacturer and service center in which Corus Staal's parent company, Corus Nederland BV, has a shareholder interest. For purposes of our analysis, we used Namascor's and Laura's sales to unaffiliated customers, and, where Laura consumed the subject merchandise purchased from Corus Staal in its manufacturing operations, we used Corus Staal's sales to Laura. In addition, Corus Staal sold the foreign like product to Feijen Service Center (Feijen), a business unit of Corus Service Center Maastricht, Corus Vlietonge BV (Vlietonge),<sup>2</sup> also a service center, Ijzerleeuw BV (Ijzerleeuw) and Geertsema Staal BV (Geerstema Staal). Both Feijen and Vlietonge are affiliated with Corus Staal through the former British Steel companies, whose parent, British Steel PLC, merged with Koninklijke Hoogovens NV (now Corus Nederland BV) in October 1999 to form the Corus Group PLC. Vlietonge has a financial interest in Ijzerleeuw and Geerstema Staal, but has no management or operational control over either company. In a letter dated February 18, 2004, Corus Staal requested an exemption from reporting downstream sales by Feijen, Vlietonge, Ijzerleeuw and Geerstema Staal because of the nature and quantity of the products sold. On April 2, 2004, the Department excused Corus Staal from reporting downstream sales by Feijen, Vlietonge, Ijzerleeuw and Geerstema Staal because of the reasons set out in the Department's letter to Corus Staal, dated April 2, 2004. See Letter from Robert James to Corus Staal dated April 2, 2004. Therefore, we have used Corus Staal's sales to Feijen, Vlietonge, Ijzerleeuw and Geerstema Staal to perform our analysis.

In the U.S. market, Corus Staal sold subject merchandise to Thomas Steel, a further manufacturer of battery-quality hot band steel. Thomas Steel is wholly owned by Corus USA Inc., which in turn is wholly owned by Corus Staal's parent company, Corus Nederland BV. Claiming the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported, Corus Staal utilized the "simplified reporting" option for the merchandise further processed by Thomas Steel. Pursuant to section 772(e) of the Tariff Act, of 1930, as amended (the Act), when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is

<sup>2</sup> Namascor also resold some of the foreign like product to Vlietonge.

likely to exceed substantially the value of the subject merchandise, we will determine the CEP for such merchandise using the price of identical or other subject merchandise, if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. *See, e.g., Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379, 57381 (September 10, 2002) (unchanged for final results, 68 FR 1816 (January 14, 2003)). Consistent with the Department's regulations, we have determined for these preliminary results that the estimated value added in the United States by Thomas Steel accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States, and therefore, the value added is likely to exceed substantially the value of the subject merchandise. We have also preliminarily determined there is a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that we have no reason to believe another methodology would be appropriate. *See* the memorandum from David Cordell and Robert James to Richard Weible, "Simplified Reporting" and Value Added in the United States by Thomas Steel," dated July 28, 2004.

#### Duty Absorption

On January 23, 2004, the petitioner, United States Steel Corporation, requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondent. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because Corus Staal BV sold to unaffiliated customers in the United States through itself as the importer of record, because it sold to affiliated service centers in the United States, and because this review was initiated two years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

In determining whether the antidumping duties have been absorbed by the respondent during the POR, we presume the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. On February 19, 2004, the Department requested evidence from the respondent to demonstrate that its U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. In its response, submitted on March 5, 2004, Corus Staal stated a number of points which are summarized in the Duty Absorption background section of the Analysis Memorandum accompanying this **Federal Register** notice. Corus Staal argues it has presented evidence that shows Corus Staal "has negotiated terms with its customers to permit Corus to set its prices at levels to avoid dumping."

Although Corus Staal claims that it has negotiated terms with its customers to permit Corus Staal to set its prices at levels to avoid dumping, it concedes "these provisions do not allow for the retroactive collection of any additional antidumping duties ultimately assessed on the subject merchandise." (See Corus Staal's response dated March 5, 2004 at page 5.) Furthermore, Corus Staal failed to provide an agreement between Corus Staal and its unaffiliated purchaser stating the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Therefore, we preliminarily find that antidumping duties have been absorbed by Corus Staal on all U.S. sales made through its importer of record, namely Corus Staal.

#### Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the descriptions in the "Scope of the Review" section of this notice, to be foreign like products for the purpose of

determining appropriate product comparisons to U.S. sales of hot-rolled steel from the Netherlands.

We have relied on the following 11 criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: Whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut-to-length sheet, whether temper rolled or not, whether pickled or not, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's December 29, 2003 questionnaire.

#### Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of the Tariff Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d)."

In the instant review, Corus Staal sold subject merchandise through two affiliated steel service centers which further manufacture flat-rolled steel products: Rafferty-Brown Steel Co., Inc. of Connecticut (RBC) and Rafferty-Brown Steel Co. of North Carolina (RBN). Corus Staal reported each of these transactions as CEP transactions, and the remainder of its U.S. sales of subject merchandise as EP transactions.

However, after reviewing the evidence on the record of this review, we have preliminarily determined that certain of Corus Staal's reported EP transactions are properly classified as CEP sales because these sales occurred after importation. This determination is consistent with section 772(b) of the Act.

During the POR, Corus Staal executed all agreements with U.S. customers and amendments related to those agreements in the Netherlands. *See* Corus Staal's

February 18, 2004 questionnaire response (February 18, 2004 QR) at 2, footnote 13. In addition, Corus Staal also served as the importer of record for subject merchandise entered during the POR.

However, in the case of "just in time" (JIT) sales to one unaffiliated customer, the invoice was issued after the goods had entered the United States. As the invoice date has been found to be the date of sale in this review and the first review of this order, the JIT sales fail to meet the criteria for EP sales which arise where the "first sale to an unaffiliated person occurs before the goods are imported into the United States." See the Department's December 29, 2003, Questionnaire at I-7.

In its response to the Department's second supplemental section C questionnaire, dated June 10, 2004, Corus Staal argues the definition provided in the questionnaire is a short hand definition whereas the statutory language defines EP sales as those where the goods are "first sold (or agreed to be sold) before the date of importation." (Section 772 (a) of the Act). See June 24, 2004 second supplemental section C questionnaire response (Second SQR) at 4(b). Corus Staal argues the relevant frame agreement between Corus Staal and its customer was signed prior to importation by Corus Staal in the Netherlands, and therefore, the transactions meet the test for EP status articulated by the Federal Circuit in its decision in *AK Steel*. *AK Steel*, 226 F.3d 1361 (Fed. Cir. 2000).

Petitioner, United States Steel Corporation (USS), argues in comments based on the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea (Stainless Steel Bar from Korea)* 67 FR 3,149 (January 23, 2002) and the accompanying Issues and Decisions Memorandum at Comment 5 that "a 'frame agreement' is irrelevant to the EP/CEP analysis" and that "for purposes of the EP/CEP analysis, therefore, it is the Department's practice to look solely at the date that the material terms of sale become established i.e., the date of sale, (in the instant case, the invoice date), rather than the date of any prior 'frame agreement.'" See July 6, 2004 Comment on behalf of USS at 3.

Corus Staal responds to petitioner's comments and argues the fact pattern in the *Stainless Steel Bar from Korea* case was different from the present case. Corus Staal claims no sales agreements were executed after importation, with the only sales document being the frame agreement, which was signed by Corus Staal in the Netherlands before

importation. See Corus Staal's July 16, 2004 response at Comment 3.

Corus Staal states in the investigation Corus Staal had argued that "the invoice should be controlling, as no material terms were established in the initial sales agreements, the frame agreements." It states that the Department, over Corus Staal's objections, agreed with petitioners in determining "although Corus Staal initially reaches the agreement with the U.S. customer on the estimated overall volume and pricing of the merchandise, CSUSA provides the final written conformation of the agreement, setting forth the agreed prices and quantities to the U.S. customer." Corus Staal argues that because of this, the Department decided to treat the reported EP sales as CEP. See Corus Staal's July 16, 2004 response at Comment 3. Corus Staal claims the "frame agreement, and not the invoice, was controlling on this issue" and is still therefore the law of the case. See *id.* at 4.

Corus Staal further argues that in *Stainless Steel Bar from Korea*, the Department looked at the "totality of circumstances involving the sales process" and in this situation, the facts of this case "support a finding that the JIT sales should be treated as EP transactions," as the frame agreement is executed in the Netherlands, the frame agreement is entered into before importation and Corus Staal retains title to the merchandise until it passes to the customer. See *id.* at 5.

Corus Staal contends the *AK Steel* case is not relevant as it did not address "how the statutory phrase 'first sold (or agreed to be sold) before the date of importation' should be interpreted." See *id.* at 5. Corus Staal maintains the fact pattern was different in that *AK Steel* did not involve "transactions between a producer/exporter in the exporting country with an unaffiliated U.S. customer." See *id.* at 6.

Corus Staal also claims that because the transactions took place outside the United States, the Federal Circuit made clear that the "locus of the parties at the time of transaction does matter" and it is "unreasonable to suggest that the Federal Circuit intended to prohibit ex quay or delivered transactions made directly by a foreign producer from being treated as EP sales." At *id.* 8.

Corus Staal argues the frame agreement is controlling in this case based upon the Department's position in the investigation. However, in this review Corus Staal has maintained the invoice date "better reflects the time that the material terms of sale become fixed." See Corus Staal's April 1, 2004 SQR at 16. Corus Staal further argues

that "price and other changes up to the time of shipment (and sometimes later) are not infrequent" and the use of "invoice date most accurately reflects commercial reality as to the time that the sale took place and at which the material terms of sale become final and fixed." *Id.* at 16. This is confirmed in its April 21, 2004 response, in which Corus Staal states "until the time of invoicing/shipment, Corus Staal and/or the customer can change the quantity, price and/or the specific product to be shipped."

In Corus Staal's own words, the invoice date is the date used to determine the date of sale as changes often do occur between the frame agreement and the date of invoice. If this is the case, it is hard to argue that the frame agreement is the governing document in determining when a sale is agreed upon or when it is executed. Accordingly, if the Department accepts in this review the date of invoice as the date of sale, it should also accept such reasoning in determining the relevant date for the EP/CEP analysis. The statute clearly defines EP sales as those where the goods are "first sold (or agreed to be sold) before the date of importation" and as the date of invoice is the governing date, it is clear that in the case of the JIT sales, the sales do not meet the criterion of having been sold before importation. As Corus Staal itself acknowledges, the *AK Steel* case did not address "how the statutory phrase 'first sold (or agreed to be sold) before the date of importation' should be interpreted" or what should happen in cases where there are "transactions between a producer/exporter in the exporting country with an unaffiliated U.S. customer." See Corus Staal's July 16, 2004 response at Comments 5 and 6.

As such, the Department has preliminarily determined the sales classified as JIT sales should be reclassified as CEP sales for the purposes of this review. It is clear that based upon invoice date as the date of sale, such invoicing is taking place after importation, and therefore, the sales do not meet the criteria for EP sales as any sale or agreement to sell is not set until the invoice is actually issued. Furthermore, the goods are physically in the United States when the invoice is issued. The Department determines such sales are CEP because section 772 (b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a

purchaser not affiliated with the producer or exporter." EP sales are clearly defined as taking place "before the date of importation" whereas CEP sales are defined as taking place "before or after the date of importation" and do not preclude sales from the producer to the unaffiliated purchaser.

With respect to the remainder of Corus Staal's reported EP sales (*i.e.*, those sales to unaffiliated U.S. customers made between November 1, 2002 and October 31, 2003), we have continued to classify these as EP transactions because the contracts governing these sales were signed by Corus Staal in the Netherlands, and because such sales were invoiced before importation.

For those sales which we are classifying as EP transactions, we calculated the price of Corus Staal's EP sales in accordance with section 772(a) of the Act. We based EP on the packed, delivered, duty paid prices for export to end users and service centers in the U.S. market. We adjusted gross unit price for billing errors, freight revenue, certain minor processing expenses, tolling expenses and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, U.S. brokerage expenses, and U.S. warehousing expenses.

For those transactions categorized as CEP sales, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. Where applicable, we made adjustments to gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, U.S. brokerage expenses, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit, warranty, etc.), inventory carrying costs, and indirect selling expenses. For CEP sales, we also made an adjustment for profit in

accordance with section 772(d)(3) of the Act. Finally, with respect to subject merchandise to which value was added in the United States by RBC and RBN prior to sale to unaffiliated customers, we deducted the cost of further manufacture in accordance with section 772(d)(2) of the Act.

## Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed pursuant to an investigation under section 201 of the Trade Act of 1974, as amended (section 201 duties). As previously determined in the prior review, the Department will not deduct section 201 duties from U.S. prices in calculating dumping margins because 201 duties are not "United States import duties" within the meaning of the statute, and to make such a deduction effectively would collect the 201 duties a second time. Our examination of the safeguards and antidumping statutes and their legislative histories indicates Congress plainly considered the two remedies to be complementary and, to some extent, interchangeable. Accordingly, to the extent that section 201 duties may reduce dumping margins, this is not a distortion of any margin to be eliminated, but a legitimate reduction in the level of dumping. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands Final Results of Antidumping Duty Administrative Review* 69 FR 33630 (June 16, 2004) and accompanying Unpublished Decision Memorandum at Comment 3.

## Level of Trade

In accordance with section 773(a)(1)(B)(i) 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/CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the 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/CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. 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 differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (*i.e.*, the CEP offset provision).

In implementing these principles in the instant review, we obtained information from Corus Staal about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Corus Staal and the level to which each selling activity was performed for each channel of distribution. In identifying LOTs for U.S. CEP sales, we considered the selling functions reflected in the starting price after any adjustments under section 772(d) of the Act.

In the home market, Corus Staal reported two channels of distribution (sales by Corus Staal and sales through its affiliated service centers Namascor and Laura) and three customer categories (end users, steel service centers, and trading companies). *See, e.g.*, Corus Staal's February 18, 2004 QR at A-19. For both channels of distribution in the home market, Corus Staal performed similar selling functions, including strategic and economic planning, advertising, freight and delivery arrangements, technical/warranty services, and sales logistics support. The remaining selling activities performed did not differ significantly by channel of distribution, with the exception of market research and research and development activities, which were performed only by Corus Staal. *See* Corus Staal's February 18, 2004 QR at Exhibit A-8 and pages A-19 through A-42. One LOT exists for Corus Staal's home market sales because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each channel are sufficiently similar.

In the U.S. market, Corus Staal reported two channels of distribution for its sales of subject merchandise during the POR: EP sales made directly to unaffiliated U.S. customers and CEP sales made through its affiliated service centers, RBC and RBN. For sales classified as EP, Corus Staal reported two customer categories, end users and steel service centers. *See, e.g.*, Corus Staal's February 18, 2004 QR at A-21 and A-22. However, as explained in the

"Export Price and Constructed Export Price" section of this notice, we have preliminarily determined that certain of Corus Staal's reported EP transactions (*i.e.*, sales where invoicing took place after date of entry) are properly classified as CEP sales.

With regard to CEP sales made through RBC and RBN, Corus Staal claims "the home market and U.S. sales made by the affiliated steel service centers do constitute a different LOT from the EP and direct home market sales made by CSBV." *See id.* at 22. Corus Staal however, goes on to say "it is not claiming a LOT (or CEP offset) in this review" as "the Department had found a single level of trade for all of Corus's sales in prior determinations." *See id.* at 23.

As noted above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act. In analyzing whether a CEP offset is warranted, we reviewed information provided in section A of Corus Staal's questionnaire response regarding selling activities performed and services offered in the U.S. and foreign markets. We found there to be few differences in the selling functions performed by Corus Staal on its sales to affiliated service centers in the United States and those performed on its sales to home market customers. For example, Corus Staal provided similar freight and delivery services, technical/warranty assistance, and sales logistics support on its sales to home market customers and on its sales to RBC and RBN. *See, e.g.*, Corus Staal's February 18, 2004 QR at pages A-19 through A-60. Therefore, the Department has preliminarily determined the record does not support a finding that Corus Staal's home market sales are at a different, more advanced LOT than its CEP sales to RBC and RBN. Accordingly, no CEP offset adjustment to NV is warranted for Corus Staal's reported CEP sales.

As to Corus Staal's sales to unaffiliated customers in the United States, which we have reclassified as CEP transactions, we considered whether a LOT adjustment may be appropriate. As noted above, we have preliminarily determined that one LOT exists in the home market, and therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Thus, we examined whether Corus Staal's home market sales were at a different, more advanced LOT than its sales to U.S. unaffiliated customers to determine whether a CEP offset was necessary. Comparing the selling activities performed and services offered

by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal on its sales to unaffiliated customers in the United States and those performed for sales in the home market. For example, on sales to both home market customers and to unaffiliated U.S. customers, Corus Staal provided similar strategic and economic planning, freight and delivery services, technical/warranty assistance, research and development, and sales logistics support. *See, e.g.*, Corus Staal's February 18, 2004 QR at pages A-19 through A-60. As a result, we preliminarily find that there is not a significant difference in selling functions performed in the U.S. and foreign markets on these sales. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT; accordingly, no CEP offset adjustment is warranted.

Finally, for those sales which we are continuing to classify as EP, we considered whether a LOT adjustment is warranted. Again, comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT, and therefore, no LOT adjustment is necessary.

#### **Normal Value**

##### *A. Selection of Comparison Market*

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See, e.g.*, Corus Staal's February 18, 2004 QR at Attachment A-2.

#### *B. Affiliated Party Transactions and Arm's-Length Test*

Corus Staal reported that it made sales in the home market to affiliated resellers and end-users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102(b). Prior to performing the arm's-length test, we aggregated multiple customer codes reported for individual affiliates in order to treat them as single entities. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002) (*Modification to Affiliated Party Sales*). To test whether the sales to affiliates were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, discounts and rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification to Affiliated Party Sales* at 69187-88. In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

#### *C. Cost of Production Analysis*

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the most recently completed segment of the proceeding at the time of initiation, *i.e.*, the investigation of hot-rolled steel from the Netherlands (*see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001), as amended, *Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 55637 (November 2, 2001)), we have reasonable grounds to believe or suspect that Corus Staal made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Corus Staal.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of Corus Staal's material and

fabrication costs for the foreign like product, plus amounts for SG&A and packing costs. The Department relied on the COP data reported by Corus Staal, except as noted below:

—We excluded interest income from RBC's general and administrative (G&A) expense rate calculation.

—We recalculated RBN's G&A expense rate based on RBN's fiscal year 2003 financial statements.

For further details regarding these adjustments, see the Department's "Cost of Production, Constructed Value and Further Manufacturing Cost Calculation Adjustments for the Preliminary Results—Corus Staal BV" (COP Analysis Memorandum), dated November 29, 2004.

Corus Staal reported separate COP databases, one of which distinguished between identical control numbers (CONNUMS) produced in both its conventional hot-rolling mill and direct sheet plant. For purposes of our analysis, however, we are not distinguishing between products produced at the two facilities because the type of facility used to produce the subject merchandise is not one of the criteria used to match U.S. sales of subject merchandise to sales of the foreign like product. For a list of the product characteristics considered in our analysis, see the section "Product Comparisons" above. Thus, we used the COP database that did not distinguish between the two production methods. We compared the weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to home market prices net of billing adjustments, freight revenue, certain minor processing expenses, discounts and rebates, and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: whether, within an extended period of time, such sales were made in substantial quantities; and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and

in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Corus Staal revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

#### D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the Corus Staal's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV and weight-averaged the CVs reported for identical products produced in both the conventional hot-rolling mill and direct sheet plant as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

#### E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We adjusted gross unit price for billing adjustments, discounts, rebates, freight revenue, tolling revenue, and certain minor

processing expenses, where appropriate. We made deductions, where appropriate, for freight, foreign inland freight and warehousing, brokerage, and marine insurance pursuant to section 773(a)(6)(B) of the Act, as well as for early payment discounts and rebates. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses (offset by interest revenue), warranty expenses, and credit insurance. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses. However, in this review, we have preliminarily determined that all U.S. sales match, and therefore, have not based NV on CV.

#### Currency Conversion

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(a) of the Act.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period November 1, 2002, through October 31, 2003, to be as follows:

| Manufacturer/exporter           | Margin (percent) |
|---------------------------------|------------------|
| Corus Staal BV (Corus Staal) .. | 4.61             |

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal

briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. See CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

#### Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*, i.e., less than 0.5 percent); (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 2.59 percent, the "all others" rate established in the LTFV investigation. See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 67 FR 59565 (November 29, 2001).

This notice also serves as a preliminary reminder to importers of

their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4-3459 Filed 12-2-04; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570-895]**

#### **Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Crepe Paper From the People's Republic of China**

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

**DATES: Effective Date:** December 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva at (202) 482-3208 or Hallie Noel Zink at (202) 482-6907; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

The preliminary determination in this investigation was published on September 21, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products and Certain Crepe Paper Products From The People's Republic of China*, 69 FR 56407 (September 21, 2004) ("Preliminary Determination"). Since the publication of the *Preliminary Determination*, the following events have occurred.

On October 21, 2004 Fujian Xinjifu Enterprises Co. Ltd. ("Fujian Xinjifu") submitted to the Department a letter confirming their decision not to participate in the verification of its Section A response in the above-referenced investigation.

On October 26, 2004 the Department notified all interested parties that briefs for the final determination in this investigation were due on November 1, 2004 and that rebuttal briefs were to be submitted by November 8, 2004. The Department did not receive either briefs or rebuttal briefs from any interested parties. See *Preliminary Determination* for a history of all previous comments submitted in this case.

#### **Scope of Investigation**

Crepe paper products subject to this investigation have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye-colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame-retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this investigation may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this investigation does not have specific classification numbers assigned to it under the Harmonized Tariff System of the United States ("HTSUS"). Subject merchandise may be under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

#### **Period of Investigation ("POI")**

The POI is July 1, 2003, through December 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (February 17, 2004). See 19 CFR 351.204(b)(1).

#### **Facts Available**

In the *Preliminary Determination*, we based the dumping margin for the mandatory respondents, Fuzhou Light Industry Import and Export Co., Ltd ("Fuzhou Light") and Fuzhou Magicpro Gifts Co., Ltd. ("Magicpro"), on adverse