policies considered in making the decision regarding the proposal.

The Forest Service Responsible Official is Scott D. Conroy, Rogue River-Siskiyou National Forest Supervisor. The Responsible Official will consider the Final EIS, applicable laws, regulations, policies, and analysis files in making a decision. The Responsible Official will document the decision and rationale in the Record of Decision. The decision will be subject to appeal by the general public under regulation 36 CFR part 215.

Dated: April 5, 2004.

V. Grilley,

Deputy Forest Supervisor.

[FR Doc. 04–8195 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa, Kansas, Missouri, Nebraska, and Oklahoma State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa, Kansas, Missouri, Nebraska, and Oklahoma Advisory Committees will convene at 1:30 p.m. (c.s.t.) and recess at 4:45 p.m. on Wednesday, May 26, 2004, and re-convene at 9 a.m. and adjourn at 4 p.m. on Thursday, May 27, 2004, at the Four Points by Sheraton, One East 45th Street, Kansas City, MO 64111. The purpose of the meeting is to discuss strategic planning for FY 2004–05 and conduct the "Midwest Civil Rights Listening Tour'' briefing session.

Persons desiring additional information, or planning a presentation to the Committees should contact Farella Robinson, Civil Rights Analyst of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 29, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–8197 Filed 4–9–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Notice of Postponement of Preliminary Antidumping Duty Determination

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

ACTION: Notice of postponement of preliminary antidumping duty determination in an antidumping investigation.

SUMMARY: The Department of Commerce is postponing the preliminary determination in the antidumping investigation of hand trucks and certain parts thereof from the People's Republic of China from April 21, 2004 until no later than May 17, 2004. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534, or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Sections 733(b)(1)(A) and 735(a)(1) of the Tariff Act of 1930, as amended ("the Act''), require the Department of Commerce ("Department'') to issue the preliminary determination in an antidumping investigation within 140 days after the date on which the Department initiates an investigation, and a final determination within 75 days after the date of its preliminary determination. However, if it is not practicable to complete the investigation within the time period, sections 733(c)(1) and 735(a)(2) of the Act allow the Department to extend these deadlines to a maximum of 190 days and 135 days, respectively.

Background

On December 9, 2003, the Department published in the **Federal Register** the notice of initiation of the antidumping investigation on hand trucks and certain parts thereof from the People's Republic of China ("PRC''). (*See Notice of Initiation of Antidumping Duty Investigation: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 68 FR 68591). The preliminary determination is currently due no later than April 21, 2004.

Extension of Time Limits for Preliminary Determination

Under section 733(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if the Department concludes that the parties concerned are cooperating and determines that: (i) The case is extraordinarily complicated by reason of (I) the number and complexity of the transactions to be investigated or adjustments to be considered, (II) the novelty of the issues presented, or (III) the number of firms whose activities must be investigated, and (ii) additional time is necessary to make the preliminary determination.

We have concluded that the statutory criteria for postponing the preliminary determination have been met. Specifically, the parties concerned are cooperating in this investigation. Furthermore, additional time is necessary to complete the preliminary determination due to the large variety of factor of production inputs and the need to develop surrogate value information for these inputs. Also, additional time is needed to address novel issues that have been raised in this investigation.

Pursuant to section 733(c)(1)(B) of the Act, we have determined that this investigation is "extraordinarily complicated'' and additional time is necessary. We are, therefore, postponing the preliminary determination by 26 days to May 17, 2004.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: April 6, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–8244 Filed 4–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On October 7, 2003, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2001–2002 administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea). This review covers a collapsed entity that consists of Changwon Specialty Steel Co., Ltd. (Changwon), Dongbang Special Steel Co., Ltd. (Dongbang), and Pohang Iron and Steel Co., Ltd. (POSCO) (collectively the respondent). The period of review (POR) is September 1, 2001, through August 31, 2002.

We provided interested parties with an opportunity to comment on the preliminary results of review. After analyzing the comments received, we made changes to the preliminary margin calculations. Therefore, the final weighted-average dumping margin for the companies under review differs from the margin published in the preliminary results of review. The final weighted-average dumping margin is listed below in the section entitled "Final Results of Review.

EFFECTIVE DATE: April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2003, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2001–2002 administrative review of the antidumping duty order on SSWR from Korea. *See Stainless Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 57879 (Preliminary Results). On November 7, 2003, and November 14, 2003, respectively, the respondent and the petitioners, Carpenter Technology Corp. and Empire Specialty Steel, submitted case and rebuttal briefs. No party requested a hearing.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

For purposes of the order, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the order. SF20T and K–M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T	
Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead-added	(0.10/0.30).
Tellurium-added	(0.03 min).
K–M35FL	
Carbon	0.015 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products subject to the order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Duty Absorption

In the *Preliminary Results*, the Department found that the collapsed entity POSCO/Changwon/Dongbang absorbed antidumping duties on all U.S. sales made through its affiliated importer. No parties commented on this preliminary decision. For the final results of review, we continue to find that POSCO/Changwon/Dongbang absorbed antidumping duties.

Analysis of Comments Received

Section 201 Duties

As noted in the *Preliminary Results,* because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price (EP) and constructed export price (CEP), on September 9, 2003, the Department published a request for public comments on this issue. *See Notice of Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties,* 68 FR 53104 (Sep. 9, 2003). In response to this request, the Department received comments from numerous parties. In addition, the petitioners and respondent submitted comments on the record of the instant review regarding the appropriateness of deducting section 201 duties from EP and CEP.

The petitioners argue that the statute requires deduction from U.S. price of increased customs duties as a result of the President's section 201 determination. The petitioners maintain that section 772(c) of the Act instructs that EP and CEP should be reduced by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and *United States import duties,* which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States * * * (772(c)(2)(A)) (19 U.S.C. 1677a(c)(2)(A))'' (emphasis added). The petitioners contend that because this provision requires the Department to deduct "any'' United States import duties that are incident to the transactions, and does not explicitly or implicitly exempt section 201 duties, the Department must deduct section 201 duties from EP and CEP in the margin calculation. The petitioners state that the Department enjoys no *Chevron* deference in this regard as section 201 duties are plainly "United States import duties.'' *See Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984).

Moreover, the petitioners maintain that even though the Department has never directly addressed the issue of how to treat section 201 duties in any final determination, there is precedent supporting the deduction of section 201 duties from U.S. price in the margin calculation. The petitioners note that in *Softwood Lumber From Canada,* the Department deducted from U.S. price the quota-based fee on lumber that was imposed under the Softwood Lumber Agreement (SLA). *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Softwood Lumber From Canada,* 66 FR 56062, 56067 (Nov. 6, 2001) (*Softwood Lumber From Canada*). According to the petitioners, this quota-based fee operates much the same as the 201 duties operate in this case. Further, the petitioners claim that section 201 duties are as much United States import tariffs as the "special tariff'' that the Department deducted from the U.S. price in *Fuel Ethanol from Brazil. See Notice of Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil,* 51 FR 5572 (Feb. 14, 1986) (*Fuel Ethanol from Brazil*) (in which the Department deducted from U.S. price additional duties over the existing *ad valorem* tariff for a particular type of ethyl alcohol).

Additionally, the petitioners state that past and current U.S. administrations have considered section 201 duties to simply be an increase in the normally applicable *ad valorem* customs duties. Thus, according to the petitioners, failing to deduct section 201 duties from U.S. price will directly contradict the characterization of these duties by several Administrations that have imposed the duties.

Furthermore, the petitioners note that the 2003 Harmonized Tariff Schedule (HTS) treats section 201 duties as a temporary modification to the regular customs duties. Consistent with the description of section 201 duties in the *Presidential Proclamation No. 7529,* 67 FR 10553 (Mar. 5, 2002) (*Presidential Proclamation*) and the head notes to the chapter, HTS Chapter 99 first identifies the existing (*i.e.*, normal) tariff rate for each product covered by the safeguard action and then simply notes an increase of 15 percent (*e.g.*, the duty stated in HTS Chapter 72 plus 15 percent). Thus, the petitioners claim that for U.S. Customs and Border Protection's (CBP) purposes, section 201 duties, while temporary in duration, are like any other applicable duty assessed upon importation, such as the Most Favored Nation (MFN) [1] duty rate or harbor maintenance fees. Also, the petitioners note that CBP regulations are instructive on this point and they clearly spell out the difference between regular and "special duties.'' Specifically, the petitioners point out that 19 CFR 159, subpart D, includes a category entitled "special duties,'' which include antidumping and countervailing duties while it does not include section 201 duties. Therefore, the petitioners conclude that for purposes of customs law, section 201 duties are regular duties. The petitioners also note that there is nothing in the antidumping statute or the Department's regulations that indicate that duties under section 201 should be treated any differently than *ad valorem* duties with respect to the Department's margin calculations.

In addition, the petitioners contend that there is no legal support for considering section 201 duties to be like antidumping (AD) duties, which are not deducted from U.S. price in margin calculations. As explained in *Federal Mogul* v. *United States,* 813 F. Supp. 856 (Ct. Int'l Trade 1993), there is a clear distinction between import duties that can be accurately determined and which are deducted from U.S. price in determining the dumping margin, and AD duties deposits which are estimated amounts that may not bear any relationship to the actual duties owed. Further, the petitioners assert that by making this distinction between AD duties and other import duties, the Department intended for all other import duties, where deposits of the actual normal import duties owed can be accurately determined, to be deducted from U.S. price. The petitioners argue that in both *Hoogovens Staal* v. *United States,* 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998) and *Bethlehem Steel* v. *United States,* 27 F. Supp. 2d 201, 208 (Ct. Int'l Trade 1998), the Court justified the agency's policy of not deducting AD duties on the basis that such duties were unique because they reflected estimates of the level of price discrimination.

Furthermore, the petitioners assert that the deduction of section 201 duties from U.S. price does not constitute double counting, which is another reason that has been given for the Department's policy against deducting from U.S. price. Specifically, petitioners argue that section 201 duties are imposed to offset injury resulting from import competition while AD duties are imposed to offset the amount of price discrimination between relevant markets.

Lastly, the petitioners argue that the deduction of section 201 duties from U.S. price is required to maintain the effectiveness of both the section 201 relief and the antidumping duty order. If foreign producers and their affiliated importers absorb section 201 duties by effectively lowering their U.S. prices and these duties have not been subtracted from U.S. price, the petitioners contend that the amount of dumping will be understated and the domestic industry will not benefit by the section 201 relief. Alternatively, the petitioners argue that the failure to deduct section 201 duties from U.S. price would result in an unfair comparison of U.S. price and normal value because the U.S. price would contain a duty that is not part of normal value. Therefore, the petitioners argue, the failure to subtract section 201 duties from U.S. price in margin calculations will either negate the section 201 relief or replace the relief granted under the antidumping duty provisions with the section 201 relief. The petitioners contend that there is nothing in the *Presidential Proclamation* that authorizes such a result. For all of the above reasons, the petitioners contend that the Department should deduct section 201 duties from U.S. price in calculating dumping margins.

The respondent maintains that United States import duties do not include section 201 duties.[2] Although the respondent acknowledges that neither the statute, the Department's regulations, nor the legislative history defines the term "United States import duties,'' it maintains that this term is clearly not all-inclusive, given the Department's longstanding policy of not deducting AD duties (absent a determination of duty reimbursement) and countervailing (CV) duties from U.S. price. According to the respondent, the Department's treatment of AD duties and CV duties as duties that are separate from other customs duties has effectively created two categories of import duties: Normal customs duties and special customs duties. The respondent notes that the Department's policy of not subtracting special customs duties from U.S. price has been

[1] As of 1998, Most Favored-Nation (MFN) status was changed to Normal Trade Relations (NTR) status.

[2] Although the respondent commented on the issue of whether section 201 duties should be subtracted from U.S. price in calculating dumping margins, it noted that this issue has been recently commented on by interested parties. Thus, the respondent urges the Department to wait until it has reviewed these comments and made a decision on the issue before reaching a conclusion in the present case. The petitioners point out that the issue in question is squarely before the Department in this case and the Department is obligated to reach its decision in this matter on the merits of the issue in this case. However, the petitioners state that the Department has had sufficient time to analyze the interested party comments it has received on this issue prior to the final results in this case and it should do so.

upheld by the CIT because such deductions "would reduce the U.S. price—and increase the margin—artificially'' (*Hoogovens Staal* v. *United States,* 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998)); *see also AK Steel Corp.* v. *United States,* 988 F. Supp. 594 (Ct. Int'l Trade 1998) (making an additional deduction from USP for the same AD duties that correct this price discrimination would result in double counting * * * '').

Further, the respondent argues that Section 201 duties are not normal customs duties, but are "special'' customs duties because: (1) Like AD and CV duties, they are specifically imposed to protect domestic industries against certain imports in accordance with the World Trade Organization (WTO) agreements; (2) they are not merely an extra cost or expense to the importer; (3) the mere inclusion of section 201 duties in the HTS does not render them "normal'' customs duties; (4) the placement of Section 201 duties in Chapter 99 of the HTS demonstrates that they are special customs duties—Congress establishes normal customs duties which are published in Chapters 1 through 98 of the HTS, and delegates its power to the executive branch to impose special customs duties, such as antidumping, countervailing and section 201 duties; and (5) CBP does not consider section 201 duties to be normal import duties—they refer to them as a "special duty for targeted steel products,'' and "new additional duties'' that are "cumulative on top of normal duties, antidumping/countervailing duties * * *'' [3]

Additionally, the respondent argues that the decisions in *Softwood Lumber from Canada* and *Fuel Ethanol from Brazil* do not support a conclusion that section 201 duties should be deducted from U.S. price. The respondent claims that in *Softwood Lumber from Canada*, the quota-based fee that the Department deducted from U.S. price was an export tax that Canadian exporters had agreed to pay if their exports exceeded certain quantities pursuant to the SLA—not a U.S. import duty imposed by the U.S. government. The respondent further claims that the rationale the Department applied in *Fuel Ethanol from Brazil* does not apply to section 201 duties because (1) the tariff in *Fuel Ethanol from Brazil* was added to the HTS by Congress whereas the section 201 duties are imposed by the U.S. President, and (2) section 201 duties are imposed to counter injury to the domestic industry due to increased imports whereas the tariff in *Fuel Ethanol from Brazil* was imposed to offset a federal excise tax subsidy that domestic producers received for fuel-grade ethanol.

Moreover, the respondent argues that the deduction of section 201 duties from U.S. price will result in an illegal double safeguard remedy for the domestic industry. According to the respondent, the deduction of section 201 duties will increase the amount of AD duties owed by the amount of the section 201 duties paid, and will inappropriately amplify the remedial impact on the domestic industry. The respondent claims that courts have been unwilling to support a deduction in an antidumping calculation that would double the effect of import relief or artificially inflate the calculated margins. The respondent further claims, that the law does not intend for the Department to create dumping margins artificially through the deduction of other special protective tariffs and it is contrary to good trade policy for the Department to do so.

In addition, the respondent contends that it is not necessary to deduct section 201 duties to achieve a fair comparison with normal value. The respondent claims that the petitioners' argument assumes that an increase in one cost element necessarily translates into a dollar-for-dollar change in the selling price. However, the respondent maintains that this is not true and notes that an additional cost, such as a section 201 duty, may simply result in a lower profit margin on the sale. Thus, the respondent points out, the Department does not automatically deduct all business expenses from the gross unit price.

Finally, the respondent claims that deduction of section 201 duties from U.S. price further increases the impact of section 754 of the Act (19 U.S.C. 1671), the "Byrd Amendment.'' Specifically, the respondent contends that if the Department subtracts section 201 duties from U.S. price it will increase the amount of AD duties owed, and distributed under the "Byrd Amendment.'' The respondent states that "the distribution of duties collected pursuant to section 201 is inconsistent with both the statute and the United States WTO obligations.'' Also, the respondent claims that like the "Byrd Amendment,'' the deduction of section 201 duties from U.S. price "is a non-permissible specific action against dumping'' contrary to Article 18.1 of the WTO's Antidumping Agreement, because it increases the remedy to U.S. industries through higher dumping margins and provides foreign producers and exporters with a further incentive to reduce their exports to the United States.

The Department has addressed whether it is appropriate to deduct section 201 duties from EP and CEP in Appendix I to this notice. *See* Appendix I.

Other Comments

With the exception of the issue regarding section 201 duties addressed above, all issues raised in the case and rebuttal briefs by parties to this proceeding are listed in the Appendix to this notice and addressed in the "Issues and Decision Memorandum'' (Decision Memorandum), dated April 5, 2004, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in the public Decision Memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

After analyzing the comments received, we made changes to the preliminary margin calculations. Also, we have corrected certain ministerial errors in our preliminary margin calculations. A summary of these adjustments follows:

1. We changed the matching hierarchy for certain steel grades. *See* Comment 1 of the Decision Memorandum.

2. We excluded from Dongbang's reported home market indirect selling expenses certain expenses related to third-country operations. *See* Comment 6 of the Decision Memorandum.

3. We excluded Changwon's loss on inventory valuation from the general and administrative (G&A) expenses used to calculate the G&A expense ratio. *See* Comment 7 of the Decision Memorandum.

4. We excluded Dongbang's valuation loss on using the equity method from the G&A expenses used to calculate the G&A expense ratio. *See* Comment 8 of the Decision Memorandum.

5. For Dongbang, we calculated home market imputed credit expense on both its home market sales prices and the freight revenue earned on the sales. *See* Comment 9 of the Decision Memorandum.

6. We corrected a ministerial error involving home market direct selling

[3] *See* U.S. Bureau of Customs and Border Protection, "Steel 201 Questions and Answers'' (Mar.29, 2002), available at *http://www.customs.ustreas.gov.*

expenses. *See* Comment 10 of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period September 1, 2001, through August 31, 2002:

Manufacturer/Exporter	Margin (percent)
POSCO/Changwon/Dongbang ...	1.67

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department calculated an importer (or where necessary, customer)–specific assessment rate for merchandise subject to this review. For Changwon's sales, since Changwon reported the entered values and importer for its sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For Dongbang's reported sales, since Dongbang did not report the entered value or importers for its sales, we have calculated customer-specific per-unit assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each customer and dividing this amount by the total quantity of those sales. To determine whether the per-unit duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific *ad valorem* ratios based on the export prices. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review whenever any customer-specific or importer-specific assessment rate calculated in the final results of this review is above *de minimis*. The Department will issue appraisement instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSWR from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be rate of 5.77 percent, which is the "all others'' rate established in the LTFV investigation (*see Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision,* 66 FR 41550 (August 8, 2001)). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: April 5, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I—Proposed Treatment of Section 201 Duties as a Cost

Background

Section 772(c)(2)(A) of the Tariff Act of 1930, as amended, requires that in calculating dumping margins, the Department must deduct from prices in the United States any "United States import duties'' or other selling expenses included in those prices.[4] The issue has been raised whether this provision requires the Department to deduct duties imposed under Section 201 of the Trade Act of 1974 ("201 duties'') from U.S. prices in calculating dumping margins.[5]

The only time the Department has addressed the issue is in *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*.[6] In that proceeding, Commerce declined to adjust U.S. prices by the amount of 201 duties, finding the impact of such an adjustment to be insignificant.[7] However, Commerce stated that the question of whether to treat 201 duties as a cost merited public notice and comment. Accordingly, the Department solicited comments on the issue.[8]

The Department received extensive comments and has considered them at great length. On the basis of that consideration, it has determined not to deduct 201 duties from U.S. prices in calculating dumping margins. The reasons for this decision are set forth below.

Comments in Support of Deducting Section 201 Duties

Many commenters note that section 772(c) of the Act requires that initially reported U.S. prices be reduced by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States* * *''. They contend that the term "United States import duties'' includes 201 duties, so that the Department must deduct 201 duties from U.S. prices. The commenters state that the Department enjoys no *Chevron*[9] deference in this regard, as 201

[4] 19 U.S.C. 1677a(c)(2)(A). This statutory deduction existed prior to the passage of the Uruguay Round Agreements Act (URAA), and the URAA did not modify it in any respect.

[5] *Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties*, 68 FR 53104 (Sept. 9, 2003).

[6] *See Recommendation Memorandum from Gary Taverman to Bernard Carreau, Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, Final Determination of Sales at Less Than Fair Value*, 67 FR 55788 (Aug. 30, 2002).

[7] Id.

[8] *Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties*, 68 FR 53,104 (Sept. 9, 2003).

[9] *See Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984).

duties are plainly "United States import duties.''

Additionally, several commenters state that past and current Administrations have considered 201 duties simply to be an increase in the normally applicable *ad valorem* customs duties. Thus, according to the commenters, failing to deduct 201 duties from U.S. price will directly contradict the characterization of these duties by several Administrations that have imposed the duties.

Several commenters note that the 2003 Harmonized Tariff Schedule (HTS) treats 201 duties as a temporary modification to the regular customs duties. Section 201 identifies as a type of relief that the President can provide under that section "an increase in * * * any duty on the imported article.'' The *Presidential Proclamation* imposing the 201 duties on certain steel imports directs that the duties be memorialized in the Harmonized Tariff Schedules of the United States ("HTSUS''), just like any other U.S. import duties,[10] and that the HTSUS is the accepted repository of U.S. import duties. Consistent with the description of 201 duties in the *Presidential Proclamation* and the head notes to the chapter, HTS Chapter 99 first identifies the existing (*i.e.*, normal) tariff rate for each product covered by the safeguard action and then simply notes an additional increase in that duty (*e.g.*, the duty stated in HTS Chapter 72 plus 15 percent). Thus, the commenters claim that for U.S. Customs and Border Protection's (CBP) purposes, 201 duties, while temporary in duration, are like any other applicable duty assessed upon importation, such as the Most Favored Nation [11] (MFN) duty rate or harbor maintenance fees.

The commenters note that CBP regulations are instructive on this point and they assert that the regulations clearly spell out the difference between regular and "special duties.''[12] Therefore, the commenters conclude that for purposes of customs law, 201 duties are regular duties. The commenters also note that there is nothing in the antidumping statute or the Department's regulations that indicates that 201 duties would be treated any differently than *ad valorem* duties with respect to the Department's margin calculations.

Numerous commenters contend that there is no legal support for considering 201 duties to be like antidumping duties, which are not deducted from U.S. price in margin calculations. As explained in *Federal Mogul* v. *United States*, 813 F. Supp. 856 (Ct. Int'l Trade 1993), there is a clear distinction between import duties that can be accurately determined and which are deducted from U.S. price in determining the dumping margin, and antidumping duty deposits, which are estimated amounts that may not bear any relationship to the actual duties owed. The commenters assert that, by making this distinction between antidumping duty deposits and other import duties, the Department intended that all import duties, the amount of which can be determined upon importation, to be deducted from U.S. prices.[13]

Moreover, these commenters maintain that even though the Department has never directly addressed the issue of how to treat 201 duties in any final determination, there is precedent supporting the deduction of 201 duties from U.S. price in the margin calculation. The commenters note that in *Certain Softwood Lumber Products From Canada (Softwood Lumber From Canada)*, the Department deducted from U.S. price the quota-based fee on lumber that resulted from the Softwood Lumber Agreement.[14] According to the commenters, this quota-based fee operates much the same as the 201 duties operate in this case. Further, the commenters claim that 201 duties are as much United States import tariffs as the "special tariff'' that the Department deducted from the U.S. price in *Fuel Ethanol from Brazil*, in which the Department deducted from U.S. price additional duties over the existing *ad valorem* tariff for a particular type of ethyl alcohol.[15]

Some commenters assert that deducting 201 duties from U.S. price would not constitute double counting, which is another reason that has been given for the Department's policy against deducting antidumping duties from U.S. price. These commenters argue that 201 duties are imposed to offset injury resulting from import competition while antidumping duties are imposed to offset the amount of price discrimination between relevant markets.

Several commentators assert current U.S. practice is inconsistent with that of our trading partners. In particular, these commenters argue that the European Union and Canada deduct antidumping (AD), countervailing (CVD), and safeguard duties from the export price in calculating dumping margins, and that the United States should conform its practice to those of our trading partners.

Lastly, several commenters argue that the deduction of 201 duties from U.S. prices is required in order to maintain the effectiveness of both the section 201 relief and the antidumping duty order. If foreign producers and their affiliated importers absorb 201 duties by effectively lowering their U.S. prices and these duties have not been subtracted from U.S. price, the commenters contend that the amount of dumping will be understated and the domestic industry will not benefit from the Section 201 relief. Alternatively, the failure to deduct 201 duties from U.S. price would result in an unfair comparison of U.S. price and normal value because the U.S. price would contain a duty that is not part of normal value. Therefore, the commenters argue, failing to subtract 201 duties from U.S. price in margin calculations will either negate the section 201 relief or replace the relief granted under the antidumping duty provisions with the section 201 relief.

Comments in Opposition To Deducting Section 201 Duties

Many commenters maintain that the term "United States import duties'' does not include 201 duties. While acknowledging that neither the statute, the Department's regulations, nor the legislative history defines the term, they maintain that it is not all-inclusive, given the Department's longstanding policy of not deducting antidumping duties (absent a determination of duty reimbursement) and countervailing duties from U.S. price. According to the commenters, the Department's treatment of antidumping duties and countervailing duties as duties that are separate from other customs duties has effectively created two categories of import duties: normal customs duties and special customs duties.

Numerous commenters note that the Department's policy of not subtracting special customs duties from U.S. price has been upheld by the United States Court of International Trade (CIT) because such deductions "would reduce the U.S. price—and increase the margin—artificially.''[16] These commenters argue that 201 duties are not normal customs duties, but are "special'' customs duties because: (1) Like antidumping and countervailing duties, they are specifically imposed to protect domestic industries against certain imports in accordance with the World Trade Organization (WTO) agreements; (2) they are not merely an extra cost or expense to the importer; (3) the mere inclusion of 201 duties in the HTS does not render them "normal'' customs duties; (4) the placement of 201 duties in Chapter 99 of the HTS demonstrates that they are special customs duties—Congress establishes normal customs duties which are published in Chapters 1 through 98 of the HTS, and delegates its power to the executive branch to impose special customs duties, such as antidumping, countervailing and 201 duties; and (5) CBP does not consider the 201 duties on steel to be normal import duties—it refers to them as a "special duty for targeted steel products,'' and "new additional duties'' that are "cumulative on

[10] *President's Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products*, 67 FR 10,553 (March 7, 2002).

[11] As of 1998, Most Favored-Nation (MFN) status was changed to Normal Trade Relations (NTR) status.

[12] Specifically, the commenters point out that 19 CFR 159, subpart D, includes a category entitled "special duties,'' which include antidumping and countervailing duties, but it does not include 201 duties.

[13] The commenters argue that in both *Hoogovens Staal* v. *United States*, 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998) and *Bethlehem Steel* v. *United States*, 27 F. Supp. 2d 201, 208 (Ct. Int'l Trade 1998), the Court justified the agency's policy of not deducting antidumping duties on the basis that such duties were unique because they reflected estimates of the level of price discrimination.

[14] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Softwood Lumber From Canada*, 66 FR 56062, 56067 (Nov. 6, 2001).

[15] *See Notice of Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil*, 51 FR 5,572 (Feb.14, 1986) ("*Fuel Ethanol from Brazil*'').

[16] *See Hoogovens Staal* v. *United States*, 4 F. Supp. 2d 1220; *see also AK Steel Corp.* v. *United States*, 988 F. Supp. 594 (Ct. Int'l Trade 1998) ("making an additional deduction from U.S. price for the same antidumping duties that correct this price discrimination would result in double counting * * *'')

top of normal duties, antidumping/countervailing duties* * *''[17]

Several commenters argue that the decisions in *Softwood Lumber from Canada and Fuel Ethanol from Brazil* do not support a conclusion that 201 duties should be deducted from U.S. price. They claim that in *Softwood Lumber from Canada*, the quota-based fee that the Department deducted from U.S. price was an export tax that Canadian exporters had agreed to pay if their exports exceeded certain quantities pursuant to the Softwood Lumber Agreement—not U.S. import duties imposed by the U.S. government, and thus the analogies to *Softwood Lumber from Canada* are misplaced. Similarly, commenters note that the rationale the Department applied in *Fuel Ethanol from Brazil* does not apply to 201 duties because: (1) The tariff in *Fuel Ethanol from Brazil* was added to the HTS by Congress whereas the 201 duties are imposed by the President; and (2) 201 duties are imposed to counter injury to the domestic industry due to increased imports whereas the tariff in *Fuel Ethanol from Brazil* was imposed to offset a federal excise tax subsidy that domestic producers received for fuel-grade ethanol.

Many commenters argue that the deduction of 201 duties from U.S. price will result in an illegal double safeguard remedy for the domestic industry. According to these commenters, the deduction of 201 duties will increase the amount of antidumping duties owed by the amount of the 201 duties paid, inappropriately amplifying the remedial impact of the 201 duties on the domestic industry. These commenters claim that courts have been unwilling to support a deduction in an antidumping calculation that would double the effect of import relief or artificially inflate the calculated margins. Moreover, commenters note that the AD law does not intend for the Department to create dumping margins artificially through the deduction of other special protective tariffs and it is contrary to good trade policy for the Department to do so.

Some commenters contend that it is not necessary to deduct 201 duties to achieve a fair comparison with normal value. They claim that the arguments by those in support of treating 201 duties as a cost assume that an increase in one cost element necessarily translates into a dollar-for-dollar change in the selling price. However, the commenters in opposition maintain that this is not true and note that an additional cost, such as a 201 duty, may simply result in a lower profit margin on the sale. The commenters point out that the Department does not automatically deduct all business expenses from the gross unit price.

Finally, several commenters claim that deduction of 201 duties from U.S. price further increases the impact of section 754 of the Act (19 U.S.C. 1675c), the "Byrd Amendment.'' Specifically, the commenters contend that, if the Department subtracts 201 duties from U.S. price, it will increase the amount of antidumping duties owed and distributed under the "Byrd Amendment,'' which has been found to be inconsistent with the obligations of the United States under the WTO Agreements.

The Department's Position

For the several reasons explained below, the Department has determined not to deduct 201 duties from U.S. prices under Section 772(c)(2)(A) of the Act in calculating dumping margins, either as "United States import duties'' or as selling expenses.[18]

Although the AD law does not define the term "United States import duties,'' the Senate Report that accompanied the Antidumping Act of 1921 (the "1921 Act'') contrasts antidumping duties (which it refers to as "special dumping duties'') with normal customs duties (which it refers to as "United States import duties'').[19] Moreover, Section 211 of the 1921 Act provides that, for the limited purpose of duty drawback, "the special dumping dut[ies] * * * shall be treated in all respects as regular Customs duties.''[20] If "special dumping duties'' normally were considered to be just one type of "United States import duty,'' this special provision would have served no purpose.

That "special dumping duties'' were considered to be distinct from normal customs duties is also indicated by the fact that Section 202(a) of the 1921 Act provides that "special dumping duties'' may be applied to "duty-free'' merchandise.[21] In this context, "duty-free'' must mean "free from normal Customs duties.'' If "duty-free'' had meant "free from any import duties,'' that would have included antidumping duties, so that special dumping duties would have been applied to merchandise exempt from special dumping duties. Plainly, "duty-free'' was understood to mean "free from normal Customs duties.''

Thus, Congress has long recognized that at least some duties implementing trade remedies—including at least antidumping duties—are special duties that should be distinguished from ordinary customs duties. Accordingly, Commerce consistently has treated AD duties as special duties not subject to the requirement to deduct "United States import duties'' (normal customs duties) from U.S. prices in calculating dumping margins.[22] The U.S. Court of International Trade has upheld this position on five occasions.[23] Moreover, Congress specifically endorsed this position in the Statement of Administrative Action ("SAA'') accompanying the Uruguay Round Agreements Act when, in explaining the consideration of duty absorption in administrative reviews, it stated that "[t]his new provision of law is not intended to provide for the treatment of antidumping duties as a cost.'' [24]

Like AD duties, 201 duties are special remedial duties. Section 201 duties represent the amount that the President determines is needed to provide "temporary relief for an industry suffering from serious injury * * *''.[25] This is not to say that 201 duties are identical to AD duties. Section 201 duties do not embody dumping margins, so that deducting them from U.S. prices in calculating dumping duties would not involve the circular logic that would be inherent in deducting AD duties. Nevertheless, 201 duties are special remedial measures. Although they are not identical to AD duties, they are more like them in purpose and function than they are like ordinary customs duties. The U.S. International Trade Commission has recognized the extraordinary nature of 201 duties, similarly referring to them as "special duties.'' [26]

The fact that 201 duties are recorded in the HTSUS does not establish that they are normal customs duties. Unlike normal customs duties, 201 duties are imposed only following a finding of serious injury to the

[17] *See Steel 201 Questions and Answers*, U.S. Bureau of Customs and Border Protection (Mar. 29, 2002), available at *http://www.customs.ustreas.gov*.

[18] This issue concerns sales of imported goods at prices that normally are considered to cover the applicable import duties. Generally speaking, this means sales of goods on which the seller, rather than the buyer, must pay the import duties. This normally occurs where the sales examined by Commerce are by sellers in the United States who are affiliated with the foreign producer or exporter ("constructed export price'' or "CEP'' sales). Because these sales normally occur after importation, the seller has already paid any import duties at the time of the sale. In contrast, sales from foreign producers or exporters to unrelated customers in the United States ("export price,'' or "EP'' sales) normally occur before importation. Because the buyer must pay any import duties after these sales are completed, it is generally presumed that the prices do not include any import duties.

[19] *See* S. Rep. No. 67–16, at 4 (1921).

[20] The Antidumping Act of 1921 (the "1921 Act''), 42 Stat. 15 (1921).

[21] The 1921 Act, 42 Stat. 11.

[22] In addition to being different from normal customs duties because they implement a trade remedy, AD duties also embody dumping margins. Thus, to deduct the dumping duty from the U.S. price in calculating the dumping margin essentially would be to deduct the dumping margin itself from the U.S. price in calculating the margin—a circular calculation. The Department explained its reasons for not deducting antidumping duties from U.S. prices in *Certain Cold-Rolled Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 781, 786 (Jan. 7, 1998).

[23] *See, e.g., Hoogovens Staal* v. *United States,* 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998) (Commerce need not deduct AD duties from the initial price in the United States as either U.S. import duties or as costs); *Bethlehem Steel* v. *United States,* 27 F. Supp. 2d 208 (Commerce need not deduct AD duties from the initial price in the United States as either U.S. import duties or as costs); *U.S. Steel Group* v. *United States,* 15 F. Supp. 2d 892, 898–900 (Ct. Int'l Trade 1998) (Commerce need not deduct either AD or CVDs from the starting price in the United States in calculating AD duties); *AK Steel Corp.* v. *United States,* 988 F. Supp. 594 (Ct. Int'l Trade 1997) (actual antidumping and countervailing duties need not be deducted from the initial price in the United States); *Federal Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (Ct. Int'l Trade 1993) (Commerce need not deduct estimated AD deposits from the initial price in the United States); *PQ Corp.* v. *United States,* 652 F. Supp. 724, 737 (Ct. Int'l Trade 1987) (Commerce need not deduct estimated AD deposits from the initial price in the United States).

[24] Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, Vol. 1, at p. 885 (1994)(herinafter "SAA'').

[25] S. Rep. No. 93–1298 at 119 (1974).

[26] *Stainless Steel Plate from Sweden,* TC Pub. No. 573, Inv. No. AA1921–114 (1973), cited in *Avestra AB* v. *United States,* 724 F. Supp. 974 (Ct. Int'l Trade 1989).

industry in question by the International Trade Commission. That 201 duties are contained in the HTSUS proves only that this is a pragmatic way of implementing their collection along with other import duties. In any event, although 201 duties are set out in the HTSUS, they are contained in Chapter 99, which is reserved for special or temporary duties.

The Senate Report to the Trade Act of 1974 recognized not only that 201 duties and AD duties were similar, but the two remedial duties were, in fact, complementary:

Furthermore, the Commission would be required, whenever * * * it has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act * * * or other remedial provisions of law, to notify promptly the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law. Action under one of those provisions when appropriate is to be preferred over action under this chapter.[27]

Congress again confirmed this point in 1994, in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act:

In determining whether to provide [Section 201] relief and, if so, in what amount, the President will continue the practice of taking into account relief provided under other provisions of law, such as the antidumping * * * law[] which may alter the amount of relief necessary under section 203.[28]

In other words, the injury to the U.S. industry which is the subject of an inquiry under Section 201 may be remediable (at least to some extent) under the AD law. To some extent, 201 duties are interchangeable with special AD duties. It follows that 201 duties are more appropriately regarded as a type of special remedial duty, rather than ordinary customs duties.

As for the argument that 201 duties must be deducted from U.S. prices because they are included in the term "any costs, charges, or expenses'' of bringing the merchandise into the United States, the better argument takes account of the fact that the statute refers to any additional "costs, charges, expenses and United States import duties. * * *'' This indicates that import duties are considered to be independent of other costs, charges, and expenses. While 201 duties are a special type of import duty, they are nevertheless a species of import duty, and are thus covered, if at all, by the phrase "United States import duties.'' Thus, the Department interprets the statute as providing for the subtraction from initial U.S. prices of any "additional costs, charges, or expenses and normal United States import duties * * *'', but not other import duties. The correctness of this interpretation may be seen from the fact that interpreting "U.S. import duties'' broadly would require the Department to deduct AD duties as U.S. import duties. It is well established that this is not required, and the Department's longstanding practice is not to make such a deduction.

The argument that 201 duties should be deducted from U.S. prices in calculating dumping margins rests on the premise that the Department must restore the dumping margin that would have been found absent any 201 duty. This premise is in error. Even to the extent that 201 duties may reduce dumping margins, this is not a distortion to the margin that must be eliminated, but a partial elimination of dumping. Section 201 duties are not directed at any type of unfair trade practice that Congress has defined as independent from dumping.[29] Quite the contrary, Congress has stated that the remedies provided by the two statutes complement one another and may, in fact, be substituted for one another. Consequently, to the extent that 201 duties may lower the dumping margin, this is a legitimate remedy for dumping.

Where there is a pre-existing dumping margin, deducting 201 duties from U.S. prices effectively would collect the 201 duties twice—first as 201 duties, and a second time as an increase in that dumping margin. Where there was no pre-existing dumping margin, the deduction of 201 duties from U.S. prices in an AD proceeding could create a margin. Nothing in the legislative history of section 201 or the AD law indicates that Congress intended such results. Moreover, nothing in section 201 indicates that Congress believed that 201 duties must have any particular effect on prices in the United States in order to provide an effective remedy for serious injury. If Congress had intended such a requirement, it presumably would have provided some mechanism for measuring the effect of 201 duties on U.S. prices and adjusting those duties if they did not have the intended effect. Congress provided no such mechanism.

Finally, the SAA language quoted above makes plain that any adjustment for the potential overlap between 201 and AD remedies is to be made by the President in setting the level of the 201 duties. Once the President has struck this balance, it is not Commerce's place to upset that balance by subtracting the 201 duties from U.S. prices in calculating dumping margins, providing relief beyond what the President approved. There is absolutely no indication in the Presidential Proclamation placing 201 duties on certain imports of steel that the President believed that Commerce effectively would increase those duties by taking them into account in calculating subsequent dumping margins.

The suggestion on the part of some commenters that many of our major trading partners deduct all import taxes, including safeguard duties, from reported prices in calculating dumping margins is without foundation. None of these commenters provided the Department with any evidence that any of our trading partners actually has made such an adjustment. For example,European Union law gives the EC Commission discretion to apply both AD duties and safeguard duties against the same products in some instances. This by no means establishes, however, that the EU ever has deducted safeguard duties from EU prices calculating dumping margins. Quite the contrary, the EU regulation gives the Commission the discretion to repeal existing AD measures to avoid excessive remedies where safeguard measures are applied to the same imports.[30] In the one instance of which we are aware in which the EU faced the possibility that AD duties and safeguard duties would be applied to the same imports, the Council adopted a regulation to prevent this result, except to the extent that the AD duty exceeded the safeguard duty.[31] Thus, deducting safeguard duties from EU prices in calculating AD margins, so as to collect both the entire safeguard duty and an AD duty increased by the amount of the safeguard duty would appear to conflict with the EU's actual practice. Similarly, while there is some indication that Canadian law might permit safeguard duties to be taken into account, we have no evidence that Canada has ever deducted safeguard duties from reported prices in Canada in calculating dumping margins. In any event, the fact that a particular methodology may be employed by another country would not be relevant to the question of what is permissible or appropriate under U.S. law.

Any inconsistencies between the treatment of 201 duties by the Department and the CBP in calculating the values to which *ad valorem* duty rates are applied are immaterial. It is well-established that the agencies' respective determinations are governed by different statutory provisions and regulations with distinct purposes.[32] In any event, any such differences occur only with respect to the collection of estimated antidumping duty deposits. Actual antidumping duties (as opposed to deposits of estimated antidumping duties) are the absolute difference between normal value and export price. These duties are aggregated, and then expressed as an amount per unit or a percentage of entered value that CBP applies for collection purposes. When the latter approach is employed, the percentage rate is calibrated so as to collect the correct total of absolute antidumping duties.

The Department's 1986 determination in *Fuel Ethanol from Brazil* is not relevant to the issue of the treatment of 201 duties. In that determination, the Department deducted

[27] S. Rep. No. 93–1298 at 123 (1974).

[28] SAA at 964.

[29] AD duties remedy "material injury.'' 19 U.S.C. 1673. Section 201 is aimed at providing temporary relief from imports to an industry suffering from "serious injury, or the threat thereof, so that the industry will have sufficient time to adjust to the freer international competition.'' S. Rep. No. 93–1298, at 121 (1974).

[30] *See* EC Reg. No. 452/20032, Official Journal L 69, at 8 (March 13, 2003).

[31] *See* EC Reg. No. 778/2003, Official Journal L 114 at 2 (May 8, 2003).

[32] CBP valuation methodology is governed by Section 1401a of the Trade Agreements Act of 1979. *See Koyo Seiko Co., Ltd.* v. *United States,* 955 F. Supp. 1532, 1541 (Ct. Int'l Trade 1993) ("[C]lassification under the antidumping law need not match the Customs classification, as the Customs valuation statute and antidumping statute are substantially different in both purpose and operation''); *See also Royal Business Machines* v. *United States,* 507 F. Supp. 1007, 1014 n.18 (Ct. Int'l Trade 1980), *aff'd* 69 C.C.P.A. 61, 669 F.2d 692 (C.C.P.A. 1982) ("[Customs] may not independently modify, directly or indirectly the [antidumping law] determinations, their underlying facts, or their enforcement.'').

special tariffs on imported fuel ethanol from the initial U.S. prices.[33] The tariffs in question were not 201 duties. In fact, they were not remedial duties under any trade remedy law. Rather, they were tariffs added to the HTS by Congress to offset a tax subsidy that producers received for fuel-grade ethanol. A contemporary investigation by the International Trade Commission did not find injury to a U.S. industry.[34] Consequently, *Fuel Ethanol from Brazil* is not relevant to the issue of whether 201 duties should be subtracted from U.S. prices in calculating dumping margins.

Similarly, the Department's 2002 determination in *Softwood Lumber from Canada* is not relevant to the issue of the treatment of 201 duties.[35] That proceeding involved imports of lumber that had been subject to a quota-based fee under the U.S.—Canada Softwood Lumber Agreement. The export fees applied only to exports of lumber from Canada above 14.7 billion board feet. The Department deducted these fees from initial U.S. prices, noting that they did not qualify for the exemption from such deductions for export payments "specifically intended to offset countervailable subsidies.'' [36] Because that determination involved export fees rather than import duties, and similarly did not address the purpose of 201 duties or account for the legislative history discussed above, it does not apply to the issue of whether 201 duties should be deducted.

In conclusion, Commerce will not deduct 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 that Congress plainly considered the two remedies to be complementary and, to some extent, interchangeable. Accordingly, to the extent that 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.

Appendix II—Issues in Decision Memorandum

Comment 1: Whether the Respondent Properly Reported Steel Grade Codes
Comment 2: Whether Changwon Improperly Classified Certain Home Market Sales as Non-Prime Sales
Comment 3: Whether the Respondent Misreported the Entered Value of Constructed Export Price (CEP) Sales
Comment 4: Whether Changwon Properly Accounted for Certain Bank Charges
Comment 5: Whether Certain Inland Freight Expenses Incurred by Dongbang Are Based on Arm's-length Prices
Comment 6: Whether Dongbang Properly Reported Its Home Market Indirect Selling Expenses
Comment 7: Whether the Loss in Valuation of Finished Goods Inventory Should Be Included in General and Administrative (G&A) Expenses
Comment 8: Whether the Valuation Loss on Using the Equity Method Should Be Included in G&A Expenses
Comment 9: Whether the Department of Commerce (the Department) Should Subtract Imputed Credit Expense Associated With Freight Revenue From the Home Market Price
Comment 10: Ministerial Error Allegation
Comment 11: Whether the Department Should Grant Changwon a CEP Offset to the Home Market Sales

[33] *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* 51 FR 5572 (Feb. 14, 1986).

[34] *Certain Ethyl Alcohol from Brazil,* Inv. No. 731–TA–248, USITC Pub. 1818 (Final)(March 1986).

[35] *Certain Softwood Lumber Products from Canada; Notice of Final Determination of Sales at Less Than Fair Value,* 67 FR 15539 (Apr. 2, 2002), and accompanying decision memorandum, at Comment Nine.

[36] *Id.*

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 040318097–4097–01]

RIN 0693–ZA57

Professional Research Experience Program (PREP); Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Professional Research Experience Program (PREP) is soliciting applications for financial assistance from accredited colleges and universities to enable those institutions to provide laboratory experiences and financial assistance to undergraduate and graduate students and post-doctoral associates at the NIST, Boulder Laboratories in Boulder, Colorado. In Boulder, NIST carries out programs in five laboratories—its Electronics and Electrical Laboratory (EEEL), Chemical Science and Technology Laboratory (CSTL), Physics Laboratory (PL), Materials Science and Engineering Laboratory (MSEL), and Information Technology Laboratory (ITL). The PREP seeks to encourage the growth and progress of science and engineering in the United States by providing research opportunities for students and post-doctoral associates, enabling them to collaborate with internationally known NIST scientists, exposing them to cutting-edge research. The PREP will promote students' pursuit of degrees in science and engineering, and post-doctoral associates' professional development in science and engineering. The NIST Administrative Coordinator and NIST scientists will work with appropriate department chairs, outreach coordinators, and directors of multi-disciplinary academic organizations to identify students and programs that would benefit from the PREP experience.

DATES: All applications, paper and electronic, must be received no later than 5 pm Mountain Standard Time (MST) on May 12, 2004. Applications received after this deadline will be returned with no further consideration.

ADDRESSES: Paper applications must be submitted to Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, Division 346.16, 325 Broadway, Building 1, Room 4007, Boulder, CO 80305–3328.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, Division 346.16, 325 Broadway, Boulder, CO 80305–3328; Tel.: (303) 497–3244; e-mail: *pkwright@boulder.nist.gov* or with assistance for using Grants.gov contact *support@grants.gov.* Further information regarding this announcement may also be found at *http://www.grants.gov.*

SUPPLEMENTARY INFORMATION:

Applications

Users of Grants.gov (*www.grants.gov*) will be able to download a copy of the application package, complete it off line, and then upload and submit the application package and associated proposal information via the Grants.gov website.

For electronic submission—Applicants should follow the Application Instructions provided at Grants.gov when submitting a response to this Notice. Applicants are encouraged to start early and not wait to the approaching due date before logging on and reviewing the instructions for submitting an application through Grants.gov.

For paper submission—Applicants are required to submit one signed original and two copies of the full application. All incomplete applications will be returned to the applicant. NIST determines whether an application has been submitted before the deadline by date/time stamping the applications as they are physically received in the PREP Administrator's office.