fundamental questions about the efficacy of targeted Federal contracting, specifically its ability to revitalize distressed communities and to improve the social and economic well-being of residents. This phase will examine such questions as:

(A) To what extent does the program create or improve the quality of jobs and economic opportunities in the distressed area?

(B) To what extent does the program result in new businesses locating in the community or increased rates of business retention in the community?

(C) To what extent does the program affect areas outside the distressed community by either connecting residents with opportunities in the larger community or by increasing growth in the larger area?

(D) How have the changes in these communities affected the jurisdictions in which they are located?

(E) How have areas (and residents) adjacent to the distressed communities been affected?

(F) At what cost have these outcomes been achieved? The evaluation must ultimately provide an empirical basis for assessing program costs relative to benefits.

(G) How effectively does the program interact with other government programs designed to promote the development of economically distressed communities?

In monitoring the program, the Department of Commerce can request additional information to the extent that it deems appropriate.

VI. Phased Implementation of the Program

(1) *First phase—six month testing period.* These guidelines will apply initially, during a first phase of six months' duration, only to a limited number of contracts involving industries whose two digit Standard Industrial Classification (or ''SIC'') Codes will be listed in the revision to the FAR based upon these guidelines (see SUPPLEMENTARY INFORMATION). The contracts to be selected shall be developed with the concurrence of the Department of Commerce and the procuring agency in question. We seek public comment on the industries to be listed. During the first phase, the efficacy of alternative forms of preferences in different industry settings will be tested and assessed.

(2) *Second phase—further implementation.* Further implementation of the Order will be instituted in the second phase of the program, which will begin after the first phase of the program has ended. In the second phase, the program will be applied to a larger number of contracts within selected two digit SIC Code industries involved in competitive Federal procurements, consistent with efficient administration of the program. Industries included in the second phase will be identified in advance of being included. The contracts to be selected shall be developed with the concurrence of the Department of Commerce and the procuring agency in question. The efficacy of the program will be monitored and evaluated during the second phase, subject to the criteria set forth in the ''Monitoring and Evaluation'' section of these guidelines. At the end of this five or so year period, we would ascertain whether the program is meeting its goals. Specifically, we would determine whether the program (a) stimulated economic activity (through, among other things, job creation or new investment) in areas of general economic distress and (b) benefited the federal procurement system. If the program meets these objectives, it would be expanded to other selected industries for similar implementation and evaluation.

VII. Effective Date

The standards set forth in these guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation pursuant to the policies and procedures set forth in FAR Subpart 1.5. The proposed FAR revision will be published for public comment, pursuant to 48 CFR 1.501–2.

Dated: September 10, 1996.

Michael Kantor,

Secretary of Commerce.

[FR Doc. 96–23591 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–17–M

International Trade Administration

[A–421–803]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 12, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. The review covers one exporter of the subject merchandise to the United States, Hoogovens Groep BV (Hoogovens) and the period August 18, 1993, through July 31, 1994. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 12, 1995, the Department published in the Federal Register (60 FR 35893) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993). On February 6, 1996, and on August 7, 1996, the Department sent Hoogovens supplemental questionnaires on the subject of reimbursement of antidumping duties. We gave interested parties an opportunity to comment on our preliminary results and the supplemental questionnaires. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers sales of cold-rolled carbon steel flat products from the Netherlands by Hoogovens Groep BV. The review period is August 18, 1993, through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We also gave them an opportunity to comment on the issue of potential reimbursement of antidumping duties to be assessed. We received comments and rebuttal comments from Hoogovens Groep BV, an exporter of the subject merchandise, (respondent), and from Bethlehem Steel Corporation, U.S. Steel Group a Unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and WCI Steel Inc., petitioners.

Comment 1: The respondent argues that the Department should have exercised its discretion not to require Hoogovens to report a very small quantity of U.S. sales of secondary merchandise by a U.S. affiliate, Precision Slitting, Inc. (PSI), which were its only sales of ''seconds'' in the United States. While acknowledging that the Department considers the antidumping law to require the inclusion of all U.S. sales during the period of review (POR) in the calculation of margins, it cites *American Permac, Inc. v. United States,* 783 F. Supp. 1421, 1423–24 (CIT 1992), in support of its contention that sales of seconds should be excluded from the calculation of dumping margins when they are *de minimus* and distortive of the margins.

Petitioners respond that the Department's practice of including all U.S. sales was held to be reasonable in *NSK Ltd.* v. *United States,* 896 F. Supp. 1263, 1267–68 (CIT 1995).

Department's Position: It is normal Department practice to consider all of a company's U.S. sales in an administrative review, including those that were excluded due to time and resource constraints in the original investigation. *American Permac,* upon which Hoogovens relies, states that, while U.S. sales outside the ordinary course of trade normally should be included in the sales database, ''a methodology is to be applied which accounts for sales which are unrepresentative and which do not lead to a fair price comparison.'' 16 CIT 41, 42 (1992). The *American Permac* court then upheld the Department's inclusion of a small number of sales alleged by the plaintiff in that case to be distortive, noting that it was not clear from the record that any distortion actually occurred in that case. *Id.* at 43–44. Thus, *American Permac* stands for the proposition that U.S. sales in small quantities will be included *unless* they are shown to be distortive.

Commerce has met the standards set forth in *American Permac* by providing for a methodology which accounts for the allegedly unrepresentative sales involving secondary merchandise and leads to a fair comparison. As explained in the memorandum of April 19, 1995, from Roland L. MacDonald to Joseph A. Spetrini entitled *Treatment of Non-Prime Merchandise for the First Administrative Review of Certain Carbon Steel Flat Products* (''Non-Prime Memorandum''), which is part of the General Issues record for all of the Carbon Steel first reviews, the Department made every effort to avoid distortion by developing methodologies to distinguish secondary merchandise in these reviews from prime merchandise. Where the respondent combined prime and secondary merchandise within a single product grouping, Commerce separated them for the purpose of developing the model match concordance. Similarly, secondary merchandise was segregated from prime merchandise for purposes of conducting the arm's length test, the cost test, and the margin calculation. In those cases in which a U.S. sale of secondary merchandise could not be matched to a contemporaneous home market sale of secondary merchandise, Commerce compared the U.S. sale with constructed value (CV), using the approach upheld in *IPSCO, Inc. v. United States,* 965 F.2d 1056, 1060 (Fed. Cir. 1992). Specifically, because Hoogovens expended the same materials, capital, labor and overhead for prime merchandise and secondary merchandise, the CV of prime and secondary merchandise is identical. *IPSCO,* 965 F.2d at 1058, 1060–61.

Finally, Hoogovens own characterization of these sales as ''insignificant'' suggests that they could not significantly distort the overall, weight-averaged, margin. Because Hoogovens has not shown that, despite these measures, the relevant PSI sales are distortive, Commerce has not excluded them from the U.S. sales database. *See also* Comment 2.

Comment 2: Respondent contends that the Department's use of CV to calculate foreign market value (FMV) for matches to U.S. sales of seconds is internally inconsistent with its policy enunciated in its Non-Prime Memorandum that ''the Department should consider, and compensate for, the potentially distortive effects of including seconds in our antidumping duty calculations.'' Respondent urges the Department either to use Hoogovens' reported CV for seconds (which was based on standard costs multiplied by the ratio of the sales value of seconds to the sales value of prime merchandise), or to exclude from the margin calculation those secondary sales for which there are no contemporaneous home market matching sales, or to calculate FMV based on the weight-averaged price of home market seconds for the entire POR.

Repondent argues that the Department's methodology is not ''compelled'' by the Court of Appeals decision in *IPSCO,* which affirmed the Department's decision to allocate production costs equally between the prime product and a co-product in calculating CV for the co-product.

Respondent contends that seconds are by-products, and absent any instructions from the court on how to calculate costs for by-products, the Department must accept the costing of these products according to GAAP. Hoogovens contends that it treats secondary merchandise as a by-product in its accounting system.

Petitioners respond that Hoogovens' argument that seconds are a by-product is unsupported by evidence in the record. Moreover, this claim is contradicted by other evidence in the record. In the calculation of CV, Hoogovens used the income from the sale of by-products as an offset against the total costs of production, but used a different methodology for costing seconds. Hoogovens' calculation of standard costs for seconds is known as the ''sales value at split-off method,'' and is generally used to cost co-products, not by-products. Petitioners claim that PSI's sales of seconds are treated as sales of co-products, and that therefore they should be costed in the same way as prime products, like the secondary products at issue in *IPSCO*. Further, the petitioners argue, the suggestion that including these sales distorts the calculated margins has no basis. To the extent that there is any potential for distortion, they argue, the Department has adopted a methodology which compensates for such distortion by comparing U.S. sales of seconds to sales of seconds in the home market, or when there are no contemporaneous home market sales, to the constructed value (CV).

Department's Position: We disagree with the respondent. The Department continues to follow *IPSCO* in its practice. Respondent's argument that seconds are a by-product is unsupported by the record. In the response to Section VI of the Department's questionnaire (November 14, 1994), Hoogovens described its by-products accounting as follows (Exhibit VI–2, p. 6): ''The cost of the by-products like cookery [*sic*] by-products, slag, gas, etc. are part of the departmental budget for raw materials cost of the iron and steel production. These by-products are sold to third parties or transferred internally at market value.'' This reference to by-products of the coke ovens is the sole reference to by-products in the response. Nowhere does Hoogoven indicate that any by-products are generated in the steel rolling mills. To the contrary, Hoogovens describes the ''seconds'' as ''prime quality steel that had been declassified at RBC as a result of damage during transatlantic shipment or during processing at RBC. Hoogovens does not actively market secondary quality subject merchandise in the United States, and exported no such material during the POR.'' (Letter to the Department dated October 5, 1994, p. 2.) Thus, the merchandise Hoogovens exported to the United States and sold as seconds was originally of prime quality and incurred the same costs as merchandise ultimately sold as prime quality.

Comment 3: Respondent argues that the Department should return to the methodology used in the investigation to make the adjustment for value added taxes (VAT), which was the methodology enunciated in *Grey Portland Cement and Clinker from Mexico*, 58 FR 25803 (April 28, 1993), to achieve tax neutrality. Although the Court of International Trade (CIT) rejected this methodology in *Federal Mogul Corp.* v, *United States*, 834 F. Supp. 1391 (CIT 1993), the Court of Appeals reversed this decision on August 28, 1995 (*Federal Mogul Corp.* v, *United States*, 94–1097, –1104). Hoogovens claims that the Department's current methodology inflates dumping margins over those that would be calculated in the absence of a tax adjustment.

Alternatively, respondent argues that if the Department continues to use its current methodology, it should apply the VAT only to gross prices, because under Dutch law the proper tax basis is gross sales price (the first level). Respondent contends the Department has no authority to calculate the tax adjustment to USP on the basis of a unit price net of all adjustments (the second level).

Petitioners comment that Hoogovens has misread the Court of Appeal's decision in *Daewoo Electronics* v. *United States*, 6 F.3d 1511, 1519–20 (Fed. Cir. 1993), in which the court ruled that in making the tax adjustment under 19 USC § 1677a(d)(1)(C), the Department must apply the tax rate to USP using a tax basis that is at an ''analogous point'' in the stream of commerce as the tax basis for the home market tax. *Daewoo* says nothing about the second level adjustment. Petitioners argue that the Department's methodology fully complies with the analogous point requirement: in both the home market and the U.S. market, the basis for the Department's tax adjustment calculations was the gross invoice price to the first unrelated customer. The Department makes the second level adjustment in order to eliminate distortion arising from different circumstances of sale in the home and U.S. markets, such as differences in freight, physical characteristics of the merchandise, or selling expenses. The CIT expressly recognized that such an adjustment is appropriate in *Daewoo Electronics Co. Ltd.* v. *United States*, 760 F.Supp. 200, 208 (Ct. Int'l Tr. 1991). Petitioners characterize as baseless Hoogovens' argument that this holding was rendered moot by the subsequent decision of the Court of Appeals in that case that the delivered price, not the ex-factory price, was the point at which taxes are incurred under Korean tax law. The CIT's holding regarding the second level adjustment becomes even more important when items such as freight charges (which are included in the delivered prices) are part of the tax basis.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department changed its treatment of home market consumption taxes for this review. Where merchandise exported to the United States was exempt from the consumption tax, the Department added to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Comment 4: Respondents comment that the Department's computer program incorrectly weight-averaged equally similar matches, because of the absence of an output statement, and failed to weight-average the differences in merchandise (''difmers'') of the equally similar home market sales.

Department's Position: We agree, and have made the appropriate corrections to the program for the final results.

Comment 5: Respondent and petitioners comment that the Department used Hoogovens' reported interest rate on short-term borrowings, instead of the interest expense factor for purposes of determining cost of production and allocating profit on further manufactured sales.

Department's Position: We agree, and have used the interest expense factor for ESP sales in our final margin calculations. This was not an issue for purchase price sales, as all of these sales had home market matches and CV was not used.

Comment 6: Respondent comments that the Department erred in not converting packing costs incurred in the Netherlands for U.S. sales from guilders to dollars in calculating foreign market value. Because of a typographical error, the format sheets supplied with Hoogovens' January 13, 1995, response incorrectly stated that these expenses were reported in U.S. dollars.

Department's Position: We agree and have corrected this error in our final margin calculation.

Comment 7: Respondent comments that in adding missing further manufacturing cost data for two control numbers, the Department erred in adding these costs to sales with process code ''40,'' which are ''as is'' sales of seconds.

Department's Position: After the preliminary results, the Department found that some sales of seconds were erroneously coded as prime merchandise, which caused the computer program to identify the further manufacturing cost data for those sales as missing. For the final results, we have corrected the coding and used the respondent's reported cost data for the sales in question.

Comment 8: Respondent comments that in the first model comparison, the Department set the variable costs of home market sales of seconds equal to the variable costs of home market sales of prime merchandise for the same control number, but failed to make this change in the second model comparison.

Department's Position: We agree with respondent and have corrected the program.

Comment 9: Respondent notes that for some of PSI's sales of seconds corresponding to six control numbers, the Department used Hoogovens' reported variable costs for seconds to compare with the (corrected) prime variable costs of home market sales of seconds. Hoogovens proposed adding new programming language to the model match and section 2 of the margin calculation programs.

Department's Position: We agree with respondent. This error occurred because Hoogovens incorrectly coded certain U.S. sales of seconds as prime sales. We have made the suggested corrections in the programs for our final results.

Comment 10: Petitioners argue that Hoogovens' claimed adjustments for home market rebates should be denied, because they include amounts paid on out-of-scope merchandise and are allocated on a per ton, rather than an *ad valorem* basis. In addition, for some of the sales, Hoogovens included post-sale price adjustments in the same field as rebates.

Respondent replies that since rebates were paid at the same rate for both scope and non-scope merchandise, there is no possibility that the reported amounts were skewed by the rebates paid on non-scope merchandise. The CIT has consistently recognized, even in the *Torrington* case cited by the petitioners (*Torrington* v. *United States,* 881 F. Supp. 622 [CIT 1995]), that respondents may apportion rebates that are paid at the same percentage rate on both scope and non-scope merchandise. (*Torrington,* 881 F. Supp. at 640, citing *Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1580 [Fed. Cir. 1983].) Hoogovens' reported rebates were ''calculated directly from actual sales figures and from the total amount of rebate paid,'' as required by the Court of Appeals in *Smith-Corona.* Hoogovens also notes that it granted rebates on both scope and non-scope merchandise to only one customer. Further, Hoogovens reported its rebates on a per ton basis, because this is the basis on which they are recorded in Hoogovens' financial records. The Department should therefore continue to use the reported rebates in the final results. Finally, respondent argues that inclusion of post-sale price adjustments in the rebate field for five home market invoices does not affect the calculation of margins where the Department has fully verified that all the components of the amounts reported in the field are accurate. Where the respondent has reported these expenses in the manner in which they are recorded in his accounting system, and the Department has verified the accuracy of these adjustments, there is no reason why they should not be accepted by the Department.

Department's Position: We agree with respondent. We verified that Hoogovens apportioned rebates on scope and non-scope merchandise at the same percentage rate. During verification, we also examined the allocation of rebates for scope and non-scope merchandise. We verified that the customers met their required sales target and traced the rebate payment through supporting documents. We saw no indication that Hoogovens ties the rebate to the invoice in their ledger system, or that the allocation method distorted the amounts reported. Hoogovens usually reported home market post-sale price adjustments in the ''OTHDIS1H'' field. However, for five home market sales, there was both a post-sale price adjustment and a rebate combined and reported in the ''REBATE1H'' field. In the January 13, 1995, response (Exhibit 23), Hoogovens broke out the post-sale price adjustments and rebates for each of the sales. We verified the rebate given in the course of the sales traces, and traced the post-sale price adjustments to the sales journal and supporting documentation.

Comment 11: Petitioners argue that Hoogovens inappropriately used different averaging periods when calculating the interest for home market and U.S. purchase price sales. These rates were used to calculate inventory carrying charges and credit expenses. Petitioners urge the Department to use the same averaging period for both home market and U.S. sales, or to calculate separate home market interest rates for the non-overlapping periods.

Respondent replies that the Department specifically instructed Hoogovens to calculate its interest rates based on the time period for which sales were reported in each market, and that the Department fully verified the reported interest rates.

Department's Position: We agree with respondent. As instructed by the Department, Hoogovens used the average interest rate for each sales reporting period in each market. It is appropriate to utilize the average interest rate applicable to sales in each of the reporting periods. This more accurately reflects the borrowing experience of the respondent for the respective sales reporting periods.

Comment 12: Petitioners argue that in calculating the dumping margin, the Department should deduct from United States Price (USP) the actual dumping duties to be paid by NVW (U.S.A.) Inc. (''NVW''), *i.e.*, the Department should treat antidumping duties as a cost. Petitioners interpret 19 U.S.C. § 1677a(d) as including antidumping and countervailing duties in the phrase ''import duties,'' which are deducted from purchase price and exporter's sales price. The Department's margin program calculates the difference between foreign market value and USP on each sale. ''This difference is essentially equal to the antidumping duties to be paid by NVW and referred to in § 1677a(d)(2)(A).'' Petitioners urge the Department to modify its program so that once this difference is calculated, it is deducted from USP before the final margin is determined.

Respondent replies that petitioners' proposal has been repeatedly rejected by the Department, the courts and the U.S. Congress, and that the petitioners cite no authorities in support of their interpretation of the statute. The effect of their proposal would be to inflate Hoogovens' margins geometrically. In effect, the margin would be doubled on each transaction. This inflated rate, they argue, would then become the basis for the deduction from USP in the succeeding administrative review, and would again be doubled. Moreover, Hoogovens actually paid only estimated duty deposits upon entry of the merchandise, rather than the final duties to be calculated in this review. These entries have not been liquidated; hence there are no antidumping duties actually paid that the Department could deduct from USP, even if such action were legally appropriate. In *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856 (CIT 1993), the CIT agreed with the Department's consistent practice of refusing to consider the amount of estimated antidumping duties based upon past margins in its calculation of current margins.

Department's Position: It is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. § 1677a(d). Antidumping and countervailing duties are unique. Unlike normal duties, which are an assessment against value, antidumping and countervailing duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived. This logical rationale for the Department's interpretation of the statute is consistent with prior decisions of the Court of International Trade. See *Federal-Mogul* v. *United States*, 813 F. Supp. 856, 872 (1993) (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties'').

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

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

Comment 13: Petitioners argue that Hoogovens should have reported direct selling expenses for NVW, and urge the Department to apply the best information available (''BIA'') by making the adverse assumption that all of NVW's expenses were direct expenses.

Respondent replies that NVW ''serves only as a facilitator, communication link and processor of documents for its U.S. imports and sales.'' In this capacity, NVW processes sales of both subject and non-subject merchandise. NVW's expenses consist primarily of rent for office space and the salaries of its officers. The Department always treats these types of expenses as indirect selling expenses. Hoogovens reported all of NVW's expenses in its calculation of U.S. indirect selling expenses, and these expenses were verified by the Department.

Department's Position: We agree with respondent. Petitioners misquoted Hoogovens' response of October 6, 1994, when they claimed that Hoogovens characterized NVW as its ''selling agent'' in the United States. Hoogovens' response made clear that its U.S. sales are negotiated by its sales office in IJmuiden, the Netherlands and not by NVW in the United States.

Comment 14: Petitioners argue that Hoogovens miscalculated its inventory carrying costs (''ICC'') for its ESP sales, contending that the amounts reported in the INVCARU field are substantially lower than should result from Hoogovens' methodology, and that this methodology is flawed. Petitioners object to Hoogovens' use of the transfer price, rather than the cost of production (''COP'') in the calculation, citing Hoogovens' statement that ''the inventory cost must be based on the cost of producing the steel, not the price for which it is sold.'' (§§ III–V Supplemental Response at 35). Although the Department's practice has been to use the cost of manufacture (COM) in the calculation, petitioners further argue that COP better measures the true opportunity cost to Hoogovens, because it includes COM and additional general, administrative and interest expenses. Second, petitioners argue, the transfer price is not on the same basis as the total cost of goods sold and should not be reduced by the ratio of the total cost to total sales. Third, petitioners argue that the home market interest rate should be used in the ESP

ICC calculation. Petitioners urge the Department to recalculate INVCARU for the ESP sales using the following formula:

ESP ICC = COP x HM Int. Rate x Inv. Days/365

Respondent replies that the methodology it used is reasonable and has been verified by the Department. Moreover, the alternative methodology the petitioners propose is almost identical to Hoogovens' methodology, and would change the calculated margins by an infinitesmal amount. Furthermore, Hoogovens' reported ICC is, in fact, cost-based. Although Hoogovens multiplies the ICC factor by the transfer price, it then multiplies the factor by the ratio of Hoogovens' average cost of production to average sales price. This results in an ICC amount that is, in effect, based on the COP. It would be inappropriate to use gross unit price, instead of the transfer price, in the equation, because the gross unit price reported for ESP sales is the price charged by Hoogovens' affiliates to the first unrelated customer. However, the ICC in question is the cost of carrying inventory from the time of production in the Netherlands to the time of delivery to Hoogovens' U.S. affiliates. In calculating the inventory cost for time in the Netherlands and time on the water, Hoogovens used the transfer price and a cost/sales ratio based on Hoogovens' own sales revenues. Thus, the price and the cost/sales ratio used in the calculation of ICC were calculated on the same basis. In regard to the interest rate, Hoogovens submits that U.S. ICC expenses should be calculated based on the costs of carrying inventory for the period for which Hoogovens reported its U.S. sales. Accordingly, the Department should not adjust Hoogovens' reported data.

Department's Position: Petitioners' argument is based on the erroneous conclusion that Hoogoven's ICC reporting was not cost-based. Respondent's methodology of multiplying the ICC factor by the ratio of average cost of production to average sales price results in an ICC based on cost of production. Therefore, we have accepted Hoogoven's ICC calculation methodology. However, the ICC reported in the INVCARU field is incorrect for a different reason. Prior to verification, respondent reported to the Department certain corrections to its previous submissions, including corrections of the short-term interest rates on its borrowings in both the home and U.S. markets. (Letter to the Department dated March 15, 1995, Exhibit 5.) On March 31, 1995, at the Department's request, Hoogovens submitted revised computer files containing corrections to certain errors identified prior to verification. These files purportedly included revised ICC to reflect the corrected short-term borrowing rates. However, this correction to ICC was not made for U.S. sales owing to a programming error. For the final results, the Department has modified its margin calculation program to correct this error.

Comment 15: Petitioners argue that the Department improperly excluded three zero-priced U.S. ''sample sales'' by Hoogovens' U.S. affiliate, although it is its practice in administrative reviews not to exclude sample sales, unless the respondent can demonstrate either that (a) no transfer of ownership occurred between the exporter and unrelated U.S. purchaser, or (b) that the product was not used for commercial consumption. Hoogovens has not so claimed for any of these sales, and therefore the Department should include them in its margin calculation.

Hoogovens contends that these sales of ''small, throw-away pieces of damaged steel'' cannot reasonably be described as ''samples,'' and that it would be unfair to require Hoogovens to pay antidumping duties on a tiny quantity of damaged steel of no commercial value. Further, Hoogovens argues that no case has been made that exclusion of these sales would prejudice the petitioners' interests.

Department's Position: We agree with petitioners. In general, the Department does not exclude any U.S. sales from its calculation of USP. The Department has considered all transactions to be sales whenever ownership transfers to an unrelated party. However, the Department has in the past determined that, in appropriate circumstances, free-of-charge samples are not ''sales'' within the meaning of section 772 of the antidumping law. The CIT has recognized that the Department must make its determinations regarding sample sales by examining the relevant facts of each individual case and that the burden of proof in demonstrating that such sales are outside the ordinary course of trade lies with the respondent. Hoogovens did not claim or offer evidence that these sales were outside the ordinary course of trade. Consequently, the Department has no basis for excluding them from the margin calculation. See *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343 (September 27, 1993); *The Timken Company* v. *United States,* 862 F. Supp. 413, 417 (CIT 1994).

Comment 16: Petitioners comment that the Department mistakenly added two incorrect program lines to its margin calculation program for further manufacturing sales which had the effect of allocating U.S. direct and indirect selling expenses on the basis of the ratio of foreign manufacturing to total manufacturing.

Department's Position: We agree with petitioners and have removed these lines from the program.

Comment 17: Petitioners argue that Hoogovens' response to the February 6, 1996, supplemental questionnaire demonstrates that Hoogovens is reimbursing NVW for payment of antidumping duties. Hoogovens responds that the issue cannot arise until final antidumping duties are assessed following completion of the administrative review. Hoogovens also argues that because NVW is not an unaffiliated U.S. customer, and makes no sales to such customers, transactions associated with NVW's ''routine selling functions'' on behalf of its foreign parent cannot ''implicate the remedial purposes of the reimbursement regulation.''

Department's Position: Section 353.26 of the antidumping regulations requires the Department to deduct from the United States price the amount of any antidumping duty that a producer or reseller either pays directly on behalf of the importer or reimburses to the importer. The Department has interpreted this regulation as applying where the importer is an affiliated party (CEP situations) as well as when the importer is unaffiliated. See *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 61 Fed. Reg. 4408, 4410–11 (Feb. 6, 1996). That interpretation is consistent with both the plain language of the regulations and the regulatory history. *See, e.g.,* 19 CFR 353.41 (defining United States price as the purchase price or the exporter's sales price).

Furthermore, contrary to Hoogovens' argument, the reimbursement regulation can apply in the first review even though duties have not yet been assessed. An agreement to reimburse is sufficient to trigger the regulation. This is evident from the required reimbursement certification, which must state that ''I have not entered into any agreement or understanding for the payment or refunding to me. . .of all or any part of the antidumping duties assessed. . . .'' 19 CFR § 353.26(b). The reimbursement adjustment is made not on the basis of cash deposits, but rather on the basis of the actual amounts to be assessed. This procedure was noted with approval by the CIT in *PQ Corp.* v. *United States,* 11 CIT 53, 67 (1987). As the opinion notes:

Accordingly, ITA states that its practice regarding reimbursements for antidumping duties is as follows. .... If merchandise is being sold at less than fair value, then the amount of that difference—the dumping margin—will be the basis for an actual assessment of antidumping duties. Only at that point, while the merchandise is still in liquidation, does ITA apply 19 CFR § 353.55 by determining what amount, if any, of the antidumping duties to be assessed are or will be paid. . .[or]. . . refunded to the importer by the manufacturer, producer, seller or exporter. The amount ''paid'' or ''refunded'' is based on the antidumping duties *to be assessed,* not on the prior deposit of estimated antidumping duties. Thus, if a producer agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed will be added in determining the dumping margin pursuant to 19 CFR § 353.55, regardless of whether a larger or smaller deposit of estimated antidumping duties has been posted. (Emphasis added).

Thus, if a producer or reseller agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed, as reflected in the initial calculation of whether dumping is occurring in that period of review, will be added in determining the dumping margin for final assessment, pursuant to 19 CFR § 353.26. As discussed above, the evidence of record demonstrates that Hoogovens has agreed to reimburse NVW for antidumping duties. Therefore, the regulation applies.

Final Results of Review

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

Manufacturer/exporter	Time period	Margin (percent)
Hoogovens Groep BV	8/18/93–7/31/94	5.54

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

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company named above will be 5.54 percent; (2) for all other Netherlands exporters, the cash deposit rate will be the rate established in the less-than-fair-value (LTFV) investigation; and (3) the cash deposit rate for non-Netherlands exporters of the subject merchandise from the Netherlands will be the rate applicable to the Netherlands supplier of that exporter. The revised rate after remand established in the LTFV investigation is 19.32 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

Dated: August 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23526 Filed 9–12–96; 8:45 am]

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[A–588–005]

High Power Microwave Amplifiers and Components Thereof From Japan; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) issued the preliminary results of its 1994–95 administrative review of the antidumping duty order on high power microwave amplifiers and components thereof (HPMAs) from Japan (61 FR 20223; May 6, 1996). The review covers one manufacturer/exporter. The review period is July 1, 1994, through June 30, 1995. We gave interested parties an opportunity to comment on our preliminary results. No comments were received. Therefore, as we did in the preliminary results, we have based our determination on facts available because the firm failed to submit a response to our questionnaire.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1996, the Department published in the Federal Register the preliminary results of its 1994–1995 administrative review of the antidumping duty order on HPMAs from Japan (61 FR 20223).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Scope of the Review

The products covered by this review are high power microwave amplifiers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 8525.10.80 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.