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

We will calculate importer-specific duty assessment rates on a unit value per pound basis. To calculate the per pound unit value for assessment, we summed the margins on U.S. sales with positive margins, and then divided this sum by the entered pounds of all U.S. sales.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate for that firm as stated 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, 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) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 36.00 percent. This is the ''all others'' rate from the LTFV investigation. See *Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 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 this 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: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6713 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 7, 1997, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Elastofibre (Malaysia), Heveafil Sdn. Bhd./Filmax Sdn. Bhd, Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1995, through September 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Fabian Rivelis, AD/CVD Enforcement Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1995–1996 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (62 FR 60221). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

Facts Available

A. Heveafil Sdn. Bhd./Filmax Sdn. Bhd. (Heveafil)

In accordance with section 776(a)(2) of the Act, we determine that the use of facts available is appropriate as the basis for Heveafil's dumping margin because the Department could not verify the information provided by Heveafil, as required under section 782(i) of the Act, despite the Department's attempts to do so.

Specifically, we were unable to verify the cost of production (COP) and constructed value (CV) information provided by Heveafil because we discovered at verification that the company had destroyed the source documents upon which a large portion of its response was based. The destruction of these source documents raises particular concern, as Heveafil should have been aware of the necessity of retaining these documents based

upon its participation in prior segments of this proceeding. Moreover, there were significant delays in the verification process itself, caused by company difficulties in locating documents and the inability of company officials to link information in the questionnaire response to the accounting system. Our findings at verification are outlined in detail in the public version of the cost verification report from Shawn Thompson and Irina Itkin to Louis Apple, dated October 17, 1997 (Heveafil cost verification report).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate to the best of its ability. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). Because we were unable to verify the information submitted by Heveafil in this period of review (POR) and because the company failed to adequately prepare and provide information during the verification, we determine that Heveafil did not cooperate to the best of its ability. Thus, pursuant to section 776(b) of the Act, we are basing Heveafil's margin on adverse facts available for purposes of the final results.

As adverse facts available for Heveafil, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 54.31 percent. For further discussion, see *Comment 16* in the ''Analysis of Comments Received'' section of this notice.

B. Rubfil Sdn. Bhd. (Rubfil)

In accordance with section 776(a)(2)(A) of the Act, we also determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1996. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to calculate Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 54.31 percent.

C. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. See SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA, H.R. Doc. 316, Vol. 1, 103rd Cong., 2d sess. 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For both Heveafil and Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1994–1995 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Heveafil and Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for Filati Lastex Elastofibre (Malaysia) (Filati) and Rubberflex Sdn. Bhd. (Rubberflex), as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV, in lieu of foreign market sales, if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (Nov. 19, 1997).

Both Filati and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers) and that this level was different, and more remote, than the level of trade at which they made CEP sales.

Because only one level of trade existed in the home market for both respondents, we conducted an analysis to determine whether a CEP offset was warranted for either company. In order to determine whether NV was established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction which excludes economic activities occurring in the United States. We found that both respondents performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondent's sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an FOB foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to either Filati or Rubberflex. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated October 31, 1997.

Constructed Export Price

For all sales by Filati and Rubberflex, we based the starting price on CEP, in accordance with section 772(b) of the Act. For further discussion, see *Comment 5* in the ''Analysis of Comments Received'' section of this notice.

Moreover, for both companies, we revised the reported data based on our findings at verification.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for discounts and rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for commissions, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. indirect selling expenses to exclude an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. See *Comment 4* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Rubberflex

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. We made deductions from the starting price, where appropriate, for discounts and rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. indirect selling expenses to exclude an offset claimed by Rubberflex relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance the Department's practice. See *Comment 4* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that both Filati and Rubberflex had viable home markets during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b) of the Act, there were reasonable grounds to believe or suspect that Rubberflex had made home market sales at prices below

its COP in this review because the Department had disregarded sales below the COP for Rubberflex in a previous administrative review. See Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia, 61 FR 54767 (Oct. 22, 1996). Moreover, the petitioner submitted an adequate allegation that there were reasonable grounds to believe or suspect that Filati had made home market sales at prices below its COP in this review. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We used the respondents' reported COP amounts, adjusted as discussed below, to compute weighted-average COPs during the POR. We compared the weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. See § 773(b)(1) of the Act.

Pursuant to section 773(b)(2) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of both Filati's and Rubberflex's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

We made the following adjustments to Filati's reported COP and CV data based on our findings at verification. For the cost of manufacturing (COM), in order to properly value second quality merchandise and apply the appropriate manufacturing variance, we first valued the second quality merchandise at the standard cost of the first quality product that was intended to be produced. We then calculated the variance between the revised total standard cost and the total actual cost, and applied the variance proportionately to each per-unit standard cost. We also recalculated Filati's reported general and administrative (G&A) expense ratio by excluding direct selling, indirect selling, G&A, and financial expenses from the denominator of the ratio. The resulting ratio was applied to the per-unit COM. Finally, we recalculated Filati's reported interest expense using the consolidated financial statements of its parent company. Specifically, we divided net interest expense by the cost of operations. For further discussion of these adjustments, see *Comment 13* in the ''Analysis of Comments Received'' section, below, and the cost calculation memorandum from Michael Martin and Gina Lee to Christian Marsh, dated March 9, 1998.

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made adjustments to Filati's reported sales data based on our findings at verification.

For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, bank charges, and U.S. commissions. Where applicable, in accordance with 19 CFR 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, bank charges, and U.S. commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. Where applicable, in accordance with 19 CFR 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

B. Rubberflex

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made adjustments to Rubberflex's reported sales data based on our findings at verification.

We made deductions from the starting price for discounts and rebates, where appropriate. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, we made a circumstance-of-sale adjustment for differences in credit expenses. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for

differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 353.57.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses.

Duty Absorption

On December 16, 1996, the petitioner requested that the Department determine, with respect to all respondents, whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer.

For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's new antidumping regulations provide that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 62 FR 27394 (May 19, 1997). Because the order on extruded rubber thread from Malaysia has been in effect since 1991, it is a transition order in accordance with section 751(c)(6)(C) of the Act. The preamble to the new antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year (62 FR 27317, May 19, 1997). This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for sunset review of the order under section 751(c) of the Act on entries for which the second and fourth years following an order have already passed. Since this review was initiated in 1996, and a request was made for a determination, we are making a duty-absorption determination as part of this administrative review.

As indicated above, section 751(a)(4) of the Act provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, the respondents sold through importers that are affiliated. We have determined that duty absorption by all respondents has occurred in this administrative review. This determination is made only with respect to the percentages of sales shown below which were made through the respondents' U.S. affiliates and which had positive dumping margins:

Manufacturer/exporter/re-seller	Percentage of U.S. affiliates' sales with dumping margins
Heveafil	100.00
Filati	100.00
Rubberflex	57.35
Rubfil	100.00

With respect to Heveafil and Rubfil, because the former failed verification and the latter did not respond to our questionnaire, we determined the dumping margins for these two companies on the basis of adverse facts available. Lacking other information, we find duty absorption on all sales by these two companies. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043 (Oct. 17, 1997) (AFBs) and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews, 63 FR 2558 (Jan. 15, 1998) (TRBs) (where we found duty absorption with respect to all sales for which the respondent provided no data in response to the Department's questionnaire).

With respect to the other respondents with affiliated importers (*i.e.*, Filati and Rubberflex) for which we did not apply adverse facts available, we must presume that the duties will be absorbed for those sales which were dumped. As the above chart indicates, 100 percent of Filati's sales, and 57.35 percent of Rubberflex's sales, by volume, were dumped. Our duty-absorption presumptions can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. After publication of our preliminary results, we gave interested parties the opportunity to submit evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duties. However, we received no such evidence. Under these circumstances, we find that antidumping duties have been absorbed by all respondents on the percentages of U.S. sales indicated. Specific arguments relating to duty absorption are discussed in *Comment 1* of the ''Analysis of Comments Received'' section, below.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from North American Rubber Thread (the petitioner), and two respondents, Filati and Heveafil. We also received rebuttal comments from Filati and Heveafil.

General Issues

Comment 1: Duty Absorption

According to the petitioner, the Department should find that the respondents are absorbing antidumping duties in cases where their U.S. subsidiaries are the importers of record.

Filati and Heveafil assert that there is no evidence that they are absorbing antidumping duties in this review. According to these companies, the duties for this review period have yet to be assessed. Consequently, there can be no finding that these companies are absorbing duties for this POR.

Moreover, these respondents state that both the URAA and SAA require that the Department perform a meaningful analysis of whether antidumping duties are absorbed. Therefore, these respondents argue that it is not lawful for the Department to merely presume that duty absorption has taken place by virtue of a finding that dumping margins exist on sales through affiliated importers. According to these respondents, such a presumption shifts the burden of demonstrating that duties are not being absorbed to the respondents. These respondents state that this presumption is both unfair and unreasonable because it is impossible to rebut, given that it would require their

customers to assume an unlimited, contingent liability for antidumping duties several years after the sale.

Filati and Heveafil also contend that acceptance of the Department's presumption renders meaningless any sunset reviews, because the existence of dumping margins would be sufficient to make an affirmative finding.

Finally, Heveafil argues that the Department should not find that it absorbed antidumping duties based on Rubfil's rate in a previous review because that rate clearly is not representative of Heveafil's sales patterns. Instead, Heveafil asserts that the Department should make a determination based on Heveafil's actual experience, as submitted to the Department in past reviews.

DOC Position

We disagree with the respondents. An investigation as to whether there is duty absorption does not simply involve publishing the margin in the final results of review. The Department's determination that duty absorption exists is based on the lack of any information on the record that the first unaffiliated customer will be responsible for paying the duty that is ultimately assessed. Absent such an irrevocable agreement between the affiliated U.S. importer(s) and the first unaffiliated customer, there is no basis for the Department to conclude that the duty attributable to the margin is not being absorbed. See, *e.g.*, AFBs at 54043 and 54044.

As in previous cases where the Department has found duty absorption (see, *e.g.*, AFBs and TRBs), this is an instance where the existence of margins raises an initial presumption that the affiliated importer(s) are absorbing the duty. As such, the burden of producing evidence to the contrary shifts to the respondent. See *Creswell Trading Co., Inc.* v. *United States*, 15 F.3d 1054 (CAFC 1994). Here, the respondents have failed to place evidence on the record, despite being given ample time to do so, in support of their position that their affiliated importer(s) are not absorbing the duties.

Regarding Heveafil's argument that we should make our duty-absorption determination based on Heveafil's actual experience, as submitted to the Department in past reviews, we also disagree. The Department's current practice is to find that duty absorption occurred for companies having a margin based on adverse facts available, absent any information to the contrary. See AFBs and TRBs. Because Heveafil submitted no information showing that its affiliated importer is not absorbing the duties for this POR, we find that duty absorption occurred.

Finally, regarding the argument that the presumption of absorption renders the sunset provisions meaningless, we note that the Department has no experience in conducting sunset reviews. Thus, we are unable to determine the impact of any duty absorption finding on a subsequent sunset review.

Comment 2: Calculation of CV Profit

The petitioner argues that the Department should exclude all below-cost sales from the calculation of CV profit, in accordance with its practice. As support for this contention, the petitioner cites Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review, 62 FR 11820, 11822 (Mar. 13, 1997) (MTPs from Japan).

Filati disagrees, citing to the Department's practice under the old law, in which the Department consistently rejected such arguments. Filati argues that the URAA does not require a change in the Department's practice. Specifically, Filati contends that the Department may exclude below-cost sales only when it determines that such sales are outside the ordinary course of trade. Filati cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2114 (Jan. 15, 1997) (1994–1995 AFBs Reviews), where the Department stated that sales must be disregarded under the cost test before they can be excluded from the calculation of CV profit. Filati asserts that this practice is consistent with the SAA as well as the WTO antidumping code.

Filati further argues that, in this case, the Department should not exclude any of its sales of second quality merchandise from the calculation of CV profit (or, correspondingly from the calculation of NV)—irrespective of whether they are above or below cost—because they are not outside the ordinary course of trade. According to Filati, these sales are the type of unusual, off-spec, infrequent sales contemplated by the SAA in its discussion of what types of below-cost sales should be included as part of NV. Specifically, Filati cites the SAA at 833, which states that ''below-cost sales may be used to determine normal value if those sales are obsolete or end-of-model-year merchandise.''

DOC Position

We agree with Filati, in part. It is the Department's practice to disregard below-cost sales in the calculation of CV profit only when those sales fail the cost test. See, *e.g.*, MTPs from Japan, 1994–1995 AFBs Reviews, and Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan 63 FR 8909 (Feb. 23, 1998) (SRAMs from Taiwan). Consequently, in accordance with our practice, we have excluded below-cost sales from the calculation of CV profit only when they were made in substantial quantities within an extended period of time at prices which would not permit the recovery of all costs within a reasonable period of time.

We disagree with Filati's contention that its below-cost sales of second quality merchandise were made in the ordinary course of trade. The Department's practice is not to distinguish between first and second quality merchandise in conducting the cost test. See, *e.g.*, Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Administrative Reviews and Notice of Revocation in Part, 61 FR 35177 (July 5, 1996). Consequently, where these sales failed the cost test, we find that they were made outside the ordinary course of trade. Accordingly, we have excluded such sales from our analysis for purposes of the final results.

Comment 3: Date of Payment

The Department noted at verification that both Filati and Rubberflex had not received payment for certain U.S. sales. According to the petitioner, the Department should use the date of the final results as the date of payment for these transactions. The petitioner asserts that, if payment for these sales had been received by the time of verification, the respondents should have indicated this to the Department.

Filati maintains that the Department's consistent policy is to use the last day of verification as the date of payment for the unpaid sales. See Brass Sheet and Strip from Sweden: Final Results of Antidumping Administrative Review, 60 FR 3617, 3620 (Jan. 18, 1995) (Brass Sheet and Strip from Sweden). Filati states that this date is the last date on which the Department can be certain that payment had not been received, given that the Department's regulations do not allow respondents to provide information after verification. Furthermore, Filati argues that the use of the date of the final results would be unduly punitive, because there is an

extended period between the time that the sales were made and the date of the final results of the review.

DOC Position

The Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for unpaid sales. See SRAMs from Taiwan and Brass Sheet and Strip from Sweden. In accordance with our practice, we have used the last day of verification as the date of payment for the transactions in question.

Company-Specific Issues

A. Filati

Comment 4: Offset for Imputed Costs Associated With AD/CVD Duty Deposits

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati notes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with its recent practice. See AFBs. However, Filati contends that the Department's change in policy conflicts with prior decisions both by the Department and the Court of International Trade (CIT). See, *e.g.*, 1994–1995 AFBs Reviews and *Federal-Mogul* v. *United States*, 950 F. Supp. 1179 (CIT 1996).

Specifically, Filati asserts that the reasoning in AFBs was flawed, in two respects. First, Filati asserts that AFBs was based on the premise that money is fungible. According to Filati, however, this point is irrelevant because the company has incurred a real expense which it would not have incurred but for the existence of the antidumping duty order. Second, Filati asserts that AFBs was based on the premise that there is no ''real'' opportunity cost associated with the duty deposits. Filati maintains that this point is also incorrect, because respondents making cash deposits are required to divert funds from more profitable ventures.

According to Filati, the CIT has mandated that imputed interest expenses incurred with respect to antidumping or countervailing duty deposits are not ''selling expenses,'' and, therefore, the antidumping law does not allow their deduction from CEP. Consequently, Filati argues that the Department should allow its offset for purposes of the final results.

DOC Position

We disagree. For these final results, we have continued to deny an offset to Filati's U.S. indirect selling expenses for expenses which Filati claims are related to financing of antidumping and countervailing duty cash deposits.

As the Department explained in AFBs, the statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent, removed such expenses from indirect selling expenses for such financing expenses in other proceedings. However, we have reconsidered our position on this matter and have now concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from CEP. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. See, *e.g.*, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992). We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id.* Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the dumping order.

Financial expenses associated with cash deposits are not a direct, inevitable consequence of an antidumping order. As noted in AFBs, money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost. See AFBs at 54079. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

In a different context, we have made similar observations. For example, we stated that ''debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit.'' See Ferrosilicon From Brazil; Final Results of Antidumping Duty Administrative Review, 61 FR 59407, 59412 (Nov. 22, 1996) (regarding whether the Department should allocate debt to specific divisions of a corporation).

So, while under the statute we may allow a limited exemption from deductions from CEP for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from CEP, we should also not deduct financing expenses that are arbitrarily associated with cash deposits. To draw an analogy as to why this logic is flawed, we also do not deduct corporate taxes from CEP; however, we would not consider a reduction in selling expenses to reflect financing alleged to be associated with payment of such taxes.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. There is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import, nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets. Thus, our policy on imputed expenses is consistent; under this policy, the imputation of financing costs to actual expenses is inappropriate.

Comment 5: *Treatment of EP Sales*

During the POR, Filati classified all sales shipped directly to U.S. customers as EP sales. The petitioner argues that the Department should treat these transactions as CEP sales because, according to the petitioner, Filati's U.S. subsidiary acts as more than a paper processor and communications link between the Malaysian parent and its customers. Specifically, the petitioner maintains that Filati's U.S. affiliate is involved in the actual negotiation of prices to unaffiliated U.S. customers.

The petitioner cites to the following cases as precedent for reclassifying the transactions in question as CEP sales: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47446, 47448 (Sept. 9, 1997); Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China, 61 FR 53190, 53194 (Oct. 10, 1996); Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review, 62 FR 18390, 18392 (Apr. 15, 1997); and Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 10530, 10532 (Mar. 7, 1997). In those cases, the Department classified the respondents' U.S. sales as CEP transactions, because the U.S. companies performed significant selling functions in the United States. Consequently, the petitioner maintains that the Department should deduct the indirect selling and operating costs of Filati's U.S. subsidiary from the starting price for purposes of the final results.

Filati contends that the Department properly treated its direct shipment sales as EP sales. Filati states that the Department has consistently classified Filati's direct shipment sales as EP sales from the original investigation through the latest published administrative review (*i.e.*, Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 62 FR 52547 (Nov. 24, 1997)). Furthermore, Filati notes that the facts of this review in no way differ from the facts of previous reviews with respect to the role in the sales process of Filati's U.S. affiliate. According to Filati, the sales in question were made prior to entry in the normal, customary commercial channel for the customers involved. Moreover, Filati asserts that the selling activities of its U.S. affiliate were well within the range of activities that the Department has previously found to be consistent with EP sales.

Filati notes that the cases cited by the petitioner are distinguishable from the circumstances present in this case, in that the U.S. subsidiaries in those cases set the prices of the direct sales. According to Filati, the Department confirmed at verification that Filati (USA) has no flexibility or authority to set prices or other significant terms for direct sales.

DOC Position

We agree with the petitioner. When sales are made prior to the date of importation through an affiliated or unaffiliated entity in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales:

- The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;
- Direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and
- The selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer (*i.e.*, a ''paper-pusher'').

See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (Apr. 15, 1997).

Although the sales in question were made prior to importation and were shipped directly to the unaffiliated customer without entering the U.S. inventory, we note that the U.S. affiliate did not serve mainly as a processor of sales-related documentation and a communications link with the buyer. Specifically, Filati stated in its questionnaire response that, for all direct sales, its U.S. affiliate makes the initial contact with the U.S. customer, negotiates terms of sale, contacts Filati to arrange for production and shipment of the container to the United States, and issues the final invoice to, and collects payment from, the customer. See Filati's February 20, 1997, questionnaire response at A–9 and A–10. As noted in the U.S. sales verification report at page 5, we found no discrepancies with the information reported in Filati's response regarding its sales process.

Because the extent of the affiliate's activities in the United States are significant, we find that the affiliate is not merely a paper processor. Accordingly, we have treated these transactions as CEP sales for purposes of the final results.

Comment 6: Sales with Zero Prices

According to the petitioner, the Department should include Filati's sales with zero prices in its analysis for purposes of the final results. The petitioner states that these transactions are actual sales because: (1) The parties negotiated a price; and (2) Filati transferred title to the product to the customer. The petitioner asserts that Filati's decision to give a full rebate to the customer after the terms of sale were set does not negate the fact that a sale occurred.

Filati contends that the Department correctly excluded the transactions in question from its analysis in the preliminary results. According to Filati, the concurrence memorandum cited by the petitioner predates the Department's current policy in this area, which was set in response to a decision by the Court of Appeals for the Federal Circuit (CAFC). See *NSK* v. *United States* 115 F.3d 965, 975 (CAFC 1997) (*NSK*). Specifically, Filati notes that the court held in NSK that the existence of consideration (*i.e.*, a bargained-for exchange) is the determinative factor, absent which there can be no sale. According to Filati, because there was no consideration for the transactions in question, the Department cannot treat them as sales.

DOC Position

We agree with Filati. At verification, we found that Filati shipped the merchandise in question, but then issued a refund to its customers after being informed that the merchandise was damaged and could not be used. See the Filati U.S. sales verification report from David Genovese and Irina Itkin, dated August 1, 1997, at page 2. The fact that Filati initially negotiated a price for these transactions is not relevant, because the sales were, in effect, canceled due to quality problems with the merchandise. Consequently, we find that these transactions were not sales, and we have excluded them from our analysis for purposes of the final results.

Comment 7: U.S. Commissions to Company Employees

The petitioner argues that the Department should treat Filati's commission payments to its U.S. sales agent as a direct selling expense, in accordance with its current practice.

According to Filati, the commissions in question are not commissions per se. Rather, Filati maintains that these payments are part of the compensation provided to its U.S. salesperson and, as such, were properly reported as indirect selling expenses. Moreover, Filati asserts that these commissions are paid periodically and are not related directly to specific sales; thus, Filati argues that, by definition, they cannot be direct selling expenses. Filati asserts that the Department should continue to treat these commissions as U.S. indirect selling expenses for purposes of the final results.

DOC Position

We agree with Filati. At verification, we confirmed that the expenses in question were not commissions per se, but rather were part of the salary paid to a company employee and were not directly related to specific sales. Consequently, we find that these expenses were properly reported in Filati's U.S. indirect selling expenses and we have continued to treat them as such for purposes of the final results.

Comment 8: Calculation of Inventory Carrying Costs

The petitioner contends that Filati incorrectly calculated inventory carrying costs on the basis of gross unit price, rather than COM. The petitioner asserts that the Department should recalculate inventory carrying costs using COM, in accordance with its standard practice.

According to Filati, the Department instructed it to calculate its inventory carrying costs using gross unit price. Filati asserts that use of gross unit price is appropriate because the opportunity cost of carrying inventory is related to the price that a company receives, not the costs that it incurs.

DOC Position

We agree with the petitioner. It is the Department's practice to calculate inventory carrying costs based on COM. See, *e.g.*, Final Determination of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553 (June 5, 1995) and Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049 (March 29, 1996). We note that companies generally value the cost of their finished goods inventory using the costs incurred to manufacture their products, rather than the value of future sales. Therefore, we recalculated inventory carrying costs using COM for purposes of the final results.

Comment 9: Double-Counting of Indirect Selling Expenses

The petitioner argues that the Department may have double-counted the deduction for Filati's home market indirect selling expenses, in that the Department used home market indirect selling expenses to offset both U.S. commissions and the indirect selling expenses of Filati's U.S. subsidiary.

According to Filati, the Department did not double-count indirect selling expenses because the Department denied Filati a CEP offset for purposes of the preliminary results. Consequently, Filati asserts that the Department did not use home market indirect selling expenses to offset the expenses of Filati's U.S. subsidiary.

DOC Position

We agree with Filati. We used Filati's home market indirect selling expenses only to offset the company's U.S. commissions. Accordingly, we have not double-counted these expenses for purposes of the final results.

Comment 10: *Treatment of Uncollected Duties In Price-to-CV Comparisons*

During the POR, the government of Malaysia allowed Filati to import rubber thread inputs duty free; however, when Filati sold extruded rubber thread in the home market, the government charged it a duty equal to three percent of the sales price. In the preliminary results, the Department treated these amounts as uncollected import duties and added them to the U.S. starting price for purposes of price-to-price comparisons. Filati argues that the Department should also have added an amount for uncollected import duties to the starting price for purposes of price-to-CV comparisons. Filati states that the statute requires such an adjustment regardless of whether normal value is based upon price or CV. See 19 U.S.C. 1677a(c)(1)(B).

DOC Position

We agree. Section 772(c)(1)(B) of the Act directs the Department to increase CEP by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States. Because these duties have not been collected by reason of exportation of the subject merchandise, we have added them to CEP for all comparisons for purposes of the final results.

Comment 11: Inclusion of Uncollected Duties in COP

According to Filati, the Department should not add the uncollected duties referenced in *Comment 10* above to COP because they are not recorded as raw materials costs in Filati's accounting system. Filati notes that both 19 U.S.C. 1677b(b)(3) and the SAA at 834 require respondents to base their reported production costs on the actual costs recorded in their normal accounting records.

However, Filati contends that, if the Department finds that the duties at issue should be included in COP, the Department should apply the duty percentage to raw material costs only.

DOC Position

We disagree that we should not add the uncollected duties to COP. Section 773(f)(1)(A) of the Act requires the Department to depart from the records of the producer if: (1) Those records are not in accordance with the general accepted accounting principles (GAAP) of the exporting country; and (2) such costs do not reasonably reflect the costs associated with the production and sale of the merchandise. In this case, we acknowledge that Filati's treatment of these duties is in accordance with Malaysian GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect Filati's cost of production. Specifically, we find that, because the amounts in question are charged by the Malaysian government in place of import duties on raw materials, they appropriately form part of Filati's cost of production. Accordingly, we have included these duties in the calculation of COP and CV.

We also disagree that we should apply the three percent duty to Filati's raw materials costs. Because these duties are assessed as a percentage of home market price, we have continued to calculate them in this manner. To do otherwise would result in our not capturing the full amount of the duty, which would consequently understate the amount of duty included in COP and CV.

Comment 12: Selection of Cost Response

Filati argues that the Department should use the COPs and CVs that it reported in its original section D response, rather than the costs reported in the supplemental response. Filati argues that, in its original response, it calculated the cost of manufacture for COP and CV based on a methodology that follows its normal standard cost accounting system and applies actual

inputs from its normal books and records. Filati argues it demonstrated at verification that the reported costs using this methodology reconcile to the actual costs used by Filati; that the reported costs were in accordance with applicable accounting norms; and that these costs reasonably reflect the cost of producing the merchandise. Filati asserts that the Department's normal practice is to accept a cost methodology when it is from the company's normal records, consistent with accounting norms, and is not proven to be distortive. Filati also argues that its original method is reasonable, as demonstrated by the small variance between its actual and standard costs.

DOC Position

We disagree. Section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise. Contrary to Filati's assertion, the costs reported in the company's original section D response were not those reflected in its normal cost accounting system. In its normal records, Filati records per-unit costs using a standard cost system and derives actual costs by applying cost variances. In its original response, Filati derived new per-unit costs by applying to its financial accounting data a new actual cost methodology. Although the data that Filati used in the original response were from its financial accounting system, the per-unit amounts were reallocated to obtain per-unit costs that differed from the per-unit costs in its normal accounting system. Filati developed new COPs and CVs specifically to respond to the Department's questionnaire.

We find unpersuasive Filati's argument that its alternative costing method is reasonable. The Department normally relies on the records of the producer if they are in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Filati's standard cost system is acceptable under Malaysian GAAP and produces per-unit costs that reasonably reflect the costs associated with the production and sale of the merchandise.

In a supplemental questionnaire, we directed Filati to resubmit its per-unit COPs and CVs based on the standard cost system it uses in the normal course of business. Filati complied with this request. Therefore, we used the costs and variances from Filati's standard cost system for purposes of the final results.

Comment 13: Offset to Financial Expenses

Filati argues that the Department should allow the total amount of consolidated interest income as an offset to consolidated interest expense in the calculation of its financial expense ratio. According to Filati, the company demonstrated at verification that all of the interest income in question was from short-term investments.

DOC Position

We agree. The audited consolidated financial statements show that the interest income was generated from current assets. Therefore, we have allowed the full amount of interest income as an offset to interest expense.

Comment 14: Unreported Costs

The petitioner claims that Filati failed to report cost information for one second-quality, and several first-quality, products. According to the petitioner, the Department should assign costs to these products based on adverse facts available. The petitioner maintains that to do otherwise would reward Filati for its failure to report costs for the products in question.

Filati maintains that it reported cost data for all products sold during the POR, pursuant to the Department's instructions. Specifically, Filati notes that it reported a single cost for each unique product, regardless of whether the product was sold as first- or second-quality merchandise. Filati asserts that it was not necessary to report a separate cost for first- and second-quality production of a given product in its COP and CV databases because the Department assigns the same cost to both. According to Filati, the Department should continue to use the costs of first- and second-quality products interchangeably in cases where the cost for one or the other quality was not explicitly identified in its databases.

DOC Position

We agree with Filati. The costs that the petitioner alleges that Filati withheld are on the record of this proceeding. Since the per-unit cost of a product is the same whether it is of first- or second-quality, using the cost of one as a replacement for the other will not affect our analysis. Therefore, we have made no adverse inference with respect to the products in question for purposes of the final results.

Comment 15: G&A Expenses of Filati's Parent Company

According to the petitioner, the Department should include the G&A expenses of MYCOM, Filati's parent company, in the calculation of Filati's CV. The petitioner notes that MYCOM provides management services to Filati.

According to Filati, its reported G&A expenses include all expenses associated with the services provided by MYCOM. Filati contends that there is no basis for including any other portion of MYCOM's expenses in G&A, because these expenses relate to activities not associated with the production or sale of extruded rubber thread.

DOC Position

We agree with the respondent. Filati included in its G&A expense calculation the amount its parent charges Filati for the services the parent provides. We reviewed this calculation at verification and found it to be reflective of the cost incurred for the types of services that MYCOM performed and the overall structure of the group companies involved. Therefore, we have made no adjustment to Filati's G&A rate calculation for additional MYCOM expenses.

B. Heveafil

Comment 16: Selection of Facts Available Rate for Heveafil

Heveafil argues that the Department should assign it a dumping rate based on non-adverse facts available. Heveafil asserts that the Department may only assign a dumping rate using adverse facts available when it is unable to verify submitted data and the respondent ''failed to cooperate by not acting to the best of its ability.'' According to Heveafil, it cooperated to the best of its ability in this review by submitting complete questionnaire responses and successfully verifying its U.S. and home market sales data. Regarding the verification of its cost data, Heveafil states that, although certain records were inadvertently purged from its computer system, it acted to the best of its ability to cooperate.

Specifically, Heveafil notes that it used its bills of materials (BOMs) to calculate the product-specific costs reported to the Department. Heveafil asserts that the database containing its BOMs was purged from its computer system after it was transmitted to the company's computer consultants for purposes of preparing a supplemental questionnaire response. Heveafil asserts that it assumed that the Department would consider the consultant's copy as an original source document. According to Heveafil, while this misunderstanding was unfortunate, it cannot be viewed as a failure to cooperate or an attempt to control

verification. In any event, Heveafil contends that it did not ''destroy'' its BOMs database, as suggested by the Department's cost verification report, because the database existed in the form of the consultant's copy. Heveafil suggests that the Department should have used this database to relate the reported costs to its production records, even if the copy was considered to be only a worksheet.

Heveafil states that the Department should assess Heveafil's level of cooperation in relation to its ability. In doing so, Heveafil claims that the Department should consider that many of its employees during this review were new to the company and did not have the experience in antidumping reviews and verifications gained by many former employees.

Moreover, Heveafil argues that it did not stand to benefit from withholding its BOMs. Heveafil states that it requested to participate in this review because it expected an assessment rate of less than its cash deposit rate of 7.88 percent. Therefore, Heveafil maintains that it was clearly in its interest to provide all data necessary to the successful completion of the review.

According to Heveafil, in the event that the Department uses adverse facts available in this case, it should not assign Heveafil the highest rate ever calculated for any respondent (*i.e.,* 54.31 percent for Rubfil in the third review). Rather, Heveafil argues that the Department should assign it the highest rate it has received in a prior segment of the proceeding, consistent with the Department's treatment of Rubberflex in the third review. According to Heveafil, the Department assigned it the same rate as a company that did not cooperate at all in this review, while Heveafil submitted responses to all questionnaires, passed its sales verifications, and verified parts of the cost response. Heveafil argues that this arbitrary practice would not encourage cooperation from a respondent interested in participating in an administrative review because inadvertent errors might negate all efforts to cooperate. Heveafil cites to Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 62 FR 17581, 17588 (April 10, 1997) and Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy, 61 FR 30288, 30306 (June 14, 1996) as cases where the Department has stated that the primary purpose for using adverse inferences is to encourage future respondent cooperation.

Heveafil cites to Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 969, 970 (Jan. 7, 1997) (Sulphur), Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309, 30310 (June 14, 1996) (Pasta), and Chrome-Plated Lug Nuts from Taiwan; Final Results of Antidumping Duty Administrative Review and Termination in Part, 61 FR 58372, 58373 (Nov. 14, 1996) (Lug Nuts) as cases where the Department has assigned respondents the highest rate ever assigned to any respondent in the proceeding only where the respondent deliberately misled the Department or refused a direct request for information. Heveafil states that, because it did not mislead the Department or refuse to provide original information, it would be inappropriate to assign it a rate on the same basis as the respondents in Sulphur, Pasta, and Lug Nuts.

In addition, Heveafil argues that Rubfil's dumping rate from the third administrative review is not relevant to its own experience because: (1) There are significant differences in the companies' sizes and consequent price and cost structures; and (2) Rubfil's margin is approximately 45 percentage points above the highest margin ever received by Heveafil. Heveafil contends that there is no evidence in either its questionnaire responses or the Department's verification reports to suggest that its prices and costs have increased so drastically as to increase its dumping rate five times.

Finally, Heveafil notes that Rubfil has appealed the Department's final results of the third review to the CIT. Heveafil maintains that, until the issues raised in that proceeding are resolved, Rubfil's dumping rate is not reliable.

DOC Position

We disagree with Heveafil's argument that the Department should apply non-adverse facts available for the final results. Heveafil attributes its failure of the cost verification simply to a misunderstanding concerning the availability of its BOMs database. However, the purging of the BOMs database was just one factor which contributed to Heveafil's failed verification. In addition to purging its computer system of the BOMs, Heveafil was unable to provide hard copies of its BOMs during the POR. Thus, there was no reliable way to test the veracity of the computer consultant's copy of the computer database.

At verification, we afforded Heveafil the opportunity to tie its reported cost data to its accounting system using source documents other than the BOMs. Specifically, on the first day of verification we requested the company's 1996 ''Budgeting Report'' which, according to the section D response, was the basis for the reported cost data. However, company officials indicated that they were unable to locate this document in its entirety. Moreover, when we attempted to reconcile the costs shown in the portion provided at verification, we were unable to do so in a number of instances. Similarly, we were unable to reconcile the costs for the products missing from the Budgeting Report to Heveafil's inventory records. For these reasons, we have determined that Heveafil did not cooperate to the best of its ability in verifying its reported cost data. See Heveafil cost verification report for further discussion.

It is true that the Department considers a respondent's ability to cooperate in determining whether or not it has cooperated to the best of its ability. See, *e.g.,* 1994–1995 AFBs Reviews. As stated in the 1994–1995 AFBs Reviews, the Department considers the experience of the respondent in antidumping duty proceedings, whether the respondent was in control of the data the Department was unable to verify, and the extent to which the respondent might have benefitted from its own lack of cooperation.

This is the fourth review of the antidumping duty order on extruded rubber thread from Malaysia. Heveafil has participated in each of the prior reviews, as well as the original less than fair value (LTFV) investigation. Although some of its accounting staff was inexperienced at the time of verification, we cannot conclude that the company as a whole was so inexperienced as to be unaware of the necessity of retaining key source documents for verification purposes.

Moreover, we note that Heveafil generated the relevant source documents in the ordinary course of business. Therefore, we find that it maintained exclusive control of the documents necessary to prepare its response and conduct verification.

We disagree with Heveafil's assertion that it did not stand to benefit from withholding source documents. Absent reliable data, we cannot accurately determine Heveafil's actual dumping liability during the POR. We find Heveafil's assertion that it expected to receive a significantly lower rate to be meaningless, because it is based not only on speculation but also on unverifiable data.

We disagree with Heveafil that we should not assign, as adverse facts available, the highest rate calculated for

Rubfil in a prior segment of this proceeding. In arguing against the application of the highest rate calculated for any respondent in any review, Heveafil attempts to distinguish its degree of cooperation with the degree of cooperation exhibited by respondents in Sulphur, Pasta, and Lug Nuts. However, in each of those cases, the underlying reason for using the highest rate as adverse facts available was that the information submitted by the respondents was rendered unusable because it could not be verified. The Department's practice has been to reject a respondent's submitted information in toto when flawed and unverifiable cost data renders all price-to-price comparisons impossible. See Notice of Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel from Italy, 59 FR 33952, 33953–54 (July 1, 1994).

We also disagree with Heveafil's argument that Rubfil's rate from the third review is neither relevant nor reliable. Regardless of Rubfil's size relative to Heveafil, we find that its calculated rate reflects the business practices occurring in the rubber thread industry. Unlike in Fresh Cut Flowers, there is no evidence on the record of this review which indicates that Rubfil's calculated rate was based on an uncharacteristic business practice. Furthermore, the CIT has not yet ruled on the matter of Rubfil's appeal. Therefore, absent evidence to the contrary, we find that its rate is reliable and has probative value.

We have considered Heveafil's argument that our selection of an adverse facts available rate in this review is not consistent with our treatment of Rubberflex in the third review. However, as stated in the 1994–1995 AFBs Reviews, as adverse facts available, we must apply a rate sufficiently adverse so as to encourage cooperation from respondents in future reviews. The intent of using an adverse inference is to encourage successful verifications and to elicit the accurate reporting of sales and cost data in future segments of the proceeding. In this case, we find that the use of the highest rate ever calculated for Heveafil of 10.68 percent would not achieve this purpose.

Comment 17: Duty Reimbursement

The petitioner argues that Heveafil's dumping duties should be doubled, in accordance with the Department's regulations, because Heveafil is, in effect, paying the dumping duties itself. Specifically, the petitioner notes that Heveafil's U.S. affiliate is not a separate entity, but, instead, is a branch of Heveafil. According to the petitioner, this branch is the importer of record for the subject merchandise and, consequently, is obligated to pay Heveafil's antidumping duties. Thus, the petitioner asserts that reimbursement has occurred.

According to Heveafil, the Department should not double its dumping duties because the criteria under 19 CFR 353.26(a)(1) which would allow it to do so have not been met. Specifically, Heveafil asserts that it has neither paid antidumping duties on behalf of the importer nor reimbursed the importer for these duties, because it, through its U.S. branch, is itself the importer of record for all imports of subject merchandise.

According to Heveafil, the Department faced a similar situation in Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Review, 62 FR 64564 (Dec. 8, 1997). In that case, the Department concluded that both the importer and exporter were one entity; consequently, there could be no payment to, or on behalf of, the importer within the meaning of the Department's regulations.

Furthermore, Heveafil asserts that, even it the requirements of 19 CFR 353.26 were to be met in this case, the remedy (*i.e.*, reducing CEP by the amount of the dumping duties) could not be applied because the Department assigned Heveafil a dumping rate using facts available.

DOC Position

We agree with Heveafil. The imposition of antidumping duties is intended to provide relief to U.S. industries injured by unfair trade practices of foreign competitors. In effect, the imposition of antidumping duties raises the price of subject merchandise to importers, thereby providing a level playing field upon which injured U.S. industries can compete. The remedial effect of the law is defeated, however, where exporters themselves pay antidumping duties, or reimburse importers for such duties. To ensure that the remedial effect of the law is not undermined, the Department has authority to reduce the U.S. starting price (used to determine dumping) by the amount of any duty paid, or reimbursed, by the producer or reseller, thereby increasing the amount of the duty ultimately collected.

Reimbursement takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties. See 19 CFR 353.26; Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408 (Feb. 6, 1996); Brass Sheet and Strip from the Netherlands; Final Results of Antidumping Duty Administrative Reviews, 57 FR 9534, 9537 (Mar. 19, 1992); and Brass Sheet and Strip from Sweden; Final Results of Antidumping Duty Administrative Review, 57 FR 2706, 2708 (Jan. 23, 1992).

While we note the petitioner's argument regarding the corporate relationship between Heveafil and its U.S. branch, it is the Department's practice to treat affiliated parties as separate entities when examining the question of reimbursement. See Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from Korea, 62 FR 55574 (Oct. 27, 1997). In this case, there is no evidence of inappropriate financial intermingling or of an agreement to reimburse antidumping duties between Heveafil and its U.S. branch. Therefore, the Department has no reason to require payment of twice the amount of any dumping duties owed.

Finally, we have considered Heveafil's argument that the Department is unable to double dumping duties in a facts available situation. Since there is no evidence which would require such a determination, this argument is moot.

Final Results of Review

As a result of comments received we have revised our preliminary results and determine that the following margins exist for the period October 1, 1995, through September 30, 1996:

Manufacturer/exporter	Percent margin
Filati Lastex Elastofibre (Malaysia)	52.89
Heveafil Sdn. Bhd./Filmax Sdn. Bhd.	54.31
Rubberflex Sdn. Bhd	3.75
Rubfil Sdn. Bhd	54.31

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between CEP and NV may vary from the percentages stated above. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. This rate will be assessed uniformly on all entries of that

particular importer made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that for Heveafil the cash deposit rate will be reduced by 0.90 percent, the current cash deposit rate attributable to export subsidies); (2) for previously 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, or the 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 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only 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)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 353.22.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6715 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: 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 September 10, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V (CEMEX), and its affiliated party Cementos de Chihuahua, S.A. de C.V. (CDC), and the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioner and respondent. We received rebuttal comments from the petitioner and respondent.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Kristen Stevens or John Totaro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

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). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 353 (April 1997).

Background

On September 10, 1997, the Department published in the **Federal Register** (62 FR 47626) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico covering the period August 1, 1995 through July 31, 1996. The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent using standard verification procedures, including on site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in verification reports in the official file of this case (public versions of these reports are on file in room B–099 of the Department's main building).

Analysis of Comments Received

The Southern Tier Cement Committee (petitioner), CEMEX, and CDC submitted case briefs on October 24, 1997. Petitioner and CEMEX submitted supplemental case briefs on December 5, 1997. All parties submitted rebuttal briefs on December 19, 1997. A public hearing was held on February 12, 1998.

Revocation of the Underlying Order

Comment 1

CEMEX contends that the Department lacks the authority to assess antidumping duties pursuant to the final results of this review because at the time the original less-than-fair-value