POSTPONEMENT OF PRELIMINARY RESULTS OF ADMINISTRATIVE REVIEW: The Department initiated the administrative review of the antidumping duty order on carbon steel butt-weld pipe fittings from Thailand on August 27, 1998 (63 FR 45796). The current deadline for the preliminary results in this review is April 1, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended, the Department finds that it is not practicable to complete this administrative review within the original time frame. (*See* memorandum from Holly Kuga to Robert LaRussa, dated March 3, 1999). Thus the Department is extending the time limit for completion of the preliminary results until August 2, 1999, which is 365 days after the last day of the anniversary month of the order. The final determination will occur within 120 days of the publication of the preliminary results.

Dated: March 4, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–5946 Filed 3–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On September 4, 1998, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (63 FR 47227). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1996, through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1998, the Department published in the **Federal Register** (63 FR 47227) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993), as amended pursuant to Court of International Trade (CIT) decision (61 FR 47871, September 11, 1996). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Applicable Statute and Regulations

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

Scope of this Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1996, through July 31, 1997. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs on October 13, 1998, and rebuttal briefs on October 19, 1998, from the respondent (Hoogovens) and petitions (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company).

Comment 1: Classifying U.S. Sales as EP or CEP Sales

Petitioners urge the Department to reclassify sales that Hoogovens reported as Export Price (EP) sales as Constructed Export Price (CEP) sales. Petitioners argue that all of Hoogoven's direct sales should be treated as CEP sales because the role of Hoogovens' U.S. affiliate, HSUSA, in the sales process was allegedly more than merely incidental or ancillary. Petitioners cite U.S. Steel Group—a Unit of USX Corporation v. United States, Slip Op. 98–96 (U.S. Court of International Trade (CIT), 1998) (''U.S. Steel Group'') and Certain Cold-

Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews, 63 FR at 13182 (March 18, 1998) (''Korean Flat Products''), as supporting CEP treatment of sales treated as EP in previous reviews.

Petitioners argue that the Department has previously found that contacting customers and soliciting orders are selling functions that are more than merely incidental or ancillary to U.S. sales, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain, 63 FR 40391, 40395 (July 29, 1998) (''Spanish Wire Rod''); Certain Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR at 38377 (July 16, 1998); and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422 (July 29, 1998) (''Italian Wire Rod''). Petitioners claim that HSUSA officials participate in contract discussions between Hoogovens and customers, sometimes negotiate contract terms without any Hoogovens officials being present, and do not receive price guidelines from Hoogovens. Petitioners cite the Department's verification report, which stated that HSUSA informs Hoogovens whether price quotes received from U.S. customers are reasonable based on its research into market prices. Verification at Hoogovens Steel USA, Inc., July 15, 1998 (July 21, 1998) at 3 (Public Version). Petitioners argue that the Department and the CIT have found that negotiating sale terms with U.S. customers is a substantive sales function supporting CEP treatment of U.S. sales. Koenig & Bauer-Albert v. United States, Consol, Ct. Slip Op. 98–83 (CIT, June 23, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404, 40418 (July 29, 1998) (''Korean Wire Rod''); Italian Wire Rod, 63 FR 40422. Petitioners refer to a statement in the Department's verification report that HSUSA is always involved with the service technician's visits to U.S. customers. Verification of Sales at Hoogovens Staal B.V., Beverwijk and IJmuiden, the Netherlands, June 8–12, 1998 at 9. Petitioners argue that HSUSA provides significant other after-sale support functions which are more than incidental or ancillary, including quarterly sales visits to U.S. customers, and troubleshooting performance problems, both in product quality and delivery services.

Petitioners allege that Hoogovens' claim that it has to approve all contract terms negotiated by HSUSA is unsubstantiated, and that during the POR Hoogovens never rejected any contract term, including price. Petitioners therefore urge the Department to ignore Hoogovens' claim. Petitioners further argue that even if the claim that Hoogovens has to approve all prices were substantiated, under Department practice this would not mean that HSUSA's role was incidental or ancillary (citing Korean Flat Products, 63 FR at 13177).

Petitioners cite the CIT's decision in U.S. Steel Group, where the court held that the U.S. affiliate was more than a mere processor of sales-related documentation and a communications link, despite the fact that the foreign producer set minimum prices above which the U.S. affiliate could negotiate. On this basis, petitioners argue that the case for reclassifying Hoogovens' sales as CEP is even stronger, because Hoogovens does not give HSUSA any price guidelines, except the U.S. Steel price list, which is used to determine the prices for extras. *See* Vertification of Sales at Hoogovens Staal B.V. at 4. Petitioners claim that the absence of a set minimum price shows that HSUSA's negotiating authority is broader than that of the U.S. affiliate in U.S. Steel Group, where the CIT upheld CEP treatment because of the U.S. affiliate's activities, even though the foreign producer responded to customer inquiries with a price quote and provided daily guidance to its U.S. affiliate regarding prices and product specifications.

Hoogovens argues that reclassification of its sales reported as EP is unwarranted because there have been no changes in the facts or law and regulations, pointing out that in the investigation and three prior administrative reviews the Department has consistently treated Hoogovens' direct U.S. sales as EP sales. Furthermore, Hoogovens cites the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, which states that no change is intended in the circumstances under which EP or CEP is used. SAA at 822–23. Petitioners rejoin that in other cases where the facts on the record of a particular review showed that the U.S. affiliate's role was more than incidental or ancillary, the Department reclassified U.S. sales as CEP despite having treated those sales as EP in prior reviews. Petitioners cite the decision in Asociacion Colombiana de Exportadores de Flores v. United States, 6 F. Supp. 2d 865 (CIT, 1998), in which the court held that ''Commerce has the flexibity to change its position providing that it explain[s] the basis for its change and providing that the explanation is in accordance with law and supported by substantial evidence.''

Although in Hoogovens' view the Department appears recently to have applied a lower threshold for the number and level of services required for a CEP finding, even under the standards articulated in Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review, 62 FR 18390 (April 15, 1997) (''German Plate'') and in Korean Flat Products, 63 FR at 13182–83 (March 18, 1998), Hoogovens argues that its sales should still be classified as EP. In the cited German Plate and Korean Flat Products cases, Hoogovens points out that the Department paid particular attention to the respective levels of involvement in the sales negotiation process of the U.S. affiliate and the foreign exporter. In both cases, Hoogovens argues, the U.S. affiliate had significant, and almost exclusive, responsibility for both the setting and negotiation of prices. Hoogovens cites the Department's conclusion in Korean Flat Products that respondent's U.S. customers ''seldom have contact'' with the foreign exporter in Korea, and the CIT's affirmance of the Department's CEP classification in the German Plate case on the grounds that the U.S. affiliate had flexibility to make decisions on its own as to price, and that communication regarding prices between respondent and the U.S. affiliate was not on a continuous basis. Hoogovens points to the Department's decision in Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Antidump Duty Administrative Review, 63 FR 38382, 38385 (July 16, 1998) (''Pipe from Taiwan'') that mere participation by a U.S. affiliate in sales-related communication does not justify CEP classification. In that case, the Department concluded that EP classification is appropriate where there is no record evidence to indicate that the U.S. affiliate has any independent authority to negotiate or set prices for direct sales in the United States. According to Hoogovens, the Department concluded that the fact that the U.S. affiliate has no say whatever in the profitability of its own sales of the subject merchandise by determining the amount of a price markup was further evidence that the entire sales process is controlled by the producer in Taiwan. Hoogovens contrasts this to the German Plate case, where the U.S. affiliate could negotiate above a minimum price

established by the foreign exporter. Finally, Hoogovens notes, in Pipe from Taiwan the Department pointed to the fact that unaffiliated U.S. customers maintain direct contact with the foreign exporter as an indicator that the U.S. affiliate was not involved in negotiations, further distinguishing the case from Korean Flat Products and German Plate.

Hoogovens argues that the record in this review is replete with evidence that, as in Pipe from Taiwan, Hoogovens' U.S. affiliate has no independent negotiating authority, no incentive to increase profitability, and serves only as a facilitator in the sales process, thus distinguishing this case from German Plate and Korean Flat Products. Hoogovens further maintains that the record clearly establishes that it maintains direct communications links with its U.S. customers and engages in continuous and frequent communications with these customers without the involvement of HSUSA, pointing out that such contact was infrequent or non-existent in German Plate and Korean Flat Products.

Hoogovens insists that the Department's statement in the preliminary results of review in this case that ''Hoogovens has stated that HSUSA negotiates prices with U.S. customers, subject to Hoogovens' approval'' is without foundation, and that nowhere in the record or any of the verification reports or memoranda filed in this case is there any evidence to support such a statement. While Hoogovens acknowledges that HSUSA communicates offers and quotes back and forth between Hoogovens and its customers, it insists that the record supports the conclusion that HSUSA does not have authority to engage in negotiations of prices or any other terms of sale with Hoogovens' U.S. customers.

According to Hoogovens, the Department did not reach its CEP finding in German Plate and Korean Flat Products based on an isolated examination of the U.S. affiliate's participation in sales negotiations, but rather on the totality of sales services performed by the affiliate, which in each case were substantial. In their case brief in German Plate, petitioners enumerated the U.S. affiliate's sale activities they considered to be appropriate grounds for reclassifying sales as CEP. In addition to setting and negotiating of prices, these activities included purchasing and reselling the subject merchandise, bearing risk of loss, holding itself out as the seller of the merchandise, financing the sale to the unaffiliated U.S. customer, and creating and maintaining extensive sales documentation. According to Hoogovens, the evidence on the record of this case makes clear that HSUSA performs none of those functions.

Hoogovens contrasts its circumstances to Korean Wire Road, 63 FR 40418–19 (July 29, 1998), where the U.S. affiliate took title to the merchandise in back-to-back transactions, whereas Hoogovern's sales are made directly to the U.S. customer, and HSUSA never takes title to the subject merchandise. In Korean Wire Rod, the Department classified respondent's sales as EP in circumstances where the sales process was allegedly similar to Hoogovens', but the U.S. affiliate was more involved in the sale process than was HSUSA. Hoogovens also distinguishes its situation from the circumstances in Spanish Wire Rod, in which the Department reclassified sales the respondent reported as EP as CEP. Hoogovens argues that in Spanish Wire Rod the key factors in the Department's decision were that the U.S. affiliate could accept the customer's order for certain sales without seeking the approval of the foreign producer/exporter, and that there was no evidence of direct contact between the foreign producer/exporter and the unaffiliated U.S. customer. Hoogovens claims that HSUSA had no independent negotiating authority and that the record is replete with evidence of direct contact between Hoogovens and its unaffiliated U.S. customers, including contacts that do not involve HSUSA. Hoogovens cites HSUSA Verification Exhibit 4 at 27, which refers to a price agreed to in the Netherlands between Hoogovens' sales director and the president of Hoogovens' largest U.S. customer for the subject merchandise. Hoogovens argues that the Department's use of the word ''negotiate'' in its verification report, where it stated that ''HSUA needs final approval from Hoogovens on sales details it negotiates with the customers,'' does not undermine the extensive evidence indicating that HSUSA's role in the sales process is limited to relaying price offers back and forth between Hoogovens and the customers and that HSUSA has no independent authority to negotiate sales on behalf of Hoogovens. Hoogovens rejects petitioners' claim that HSUSA solicits orders, pointing out that there has been no expansion in the U.S. customer base during this or previous PORs, and that the sole basis for this claim is the legal authority to solicit sales in the Amended Agency Agreement, which also specifies that HSUSA has no legal authority to act on behalf of Hoogovens. Hoogovens argues that petitioners have misconstrued the Department's statement in the HSUSA verification report that Hoogovens does not provide price guidelines to be used by HSUSA in negotiating prices as meaning that HSUSA has unfettered negotiating authority. On the contrary, according to Hoogovens, the Department made this statement to highlight the fact that Hoogovens does not set parameters within which HSUSA may then independently negotiate. Rather, Hoogovens states, it sets prices itself and does not grant HSUSA any negotiating authority whatever, but uses HSUSA to relay price offers back and forth to its customers. Hoogovens claims that the record of this review is replete with evidence that Hoogovens sets the terms for its U.S. sales and communicates this information to its customers either directly or through HSUSA. Accordingly, Hoogovens asserts that it does not reject prices ''negotiated'' by HSUSA, but rather its normal sales process does not provide HSUSA with the opportunity to agree to prices with the customer and submit them to Hoogovens for final approval. Consequently, Hoogovens argues, petitioners are misinterpreting the relevance of the CIT's decision in U.S. Steel Group to this case.

Hoogovens claims that petitioners have failed to demonstrate how the exchange of market information between HSUSA and Hoogovens constitutes negotiations with the unaffiliated customer, arguing that HSUSA's activities represent a communications link. Similarly, Hoogovens rejects petitioners' contention that HSUSA negotiates or drafts contracts, citing the Department's finding at verification that HSUSA prepares the contract forms after price and quantity have been agreed upon between Hoogovens and the U.S. customer as a customary practice carried over from an earlier corporate structure predating the formation of NVW, HSUSA's predecessor affiliated company. HSUSA Verification Report at 3.

Hoogovens rebuts petitioners' claim that HSUSA provides technical services by noting that their argument involves a misreading of a statement in the Department's verification report that HSUSA ''is always involved'' with the technician's visits to U.S. customers. Hoogovens points out that this involvement consisted primarily of arranging the logistics of these service visits. Hoogovens argues further that in the cases cited by petitioners in which after sales services were at issue, the U.S. affiliate took sole responsibility for, and performed substantial services on

behalf of, the foreign producer, and these services were only a small part of the wide array of services provided by the U.S. affiliate. Hoogovens asserts that whatever services HSUSA performed were at most incidental.

Department's Position: We agree with Hoogovens and have continued to treat its direct U.S. sales as EP for purposes of the final results of review. To ensure proper application of the statutory definitions of EP and CEP, where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. Thus, whenever sales are made prior to importation through an affiliated sales agent in the United States, the Department determines whether to characterize the sales as EP sales based upon the following criteria: (1) Whether the merchandise was shipped directly to the unaffiliated buyer, without being introduced into the affiliated selling agent's inventory; (2) whether this procedure is the customary sales channel between the parties; and (3) whether the affiliated selling agent located in the United States acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Newspaper Printing Presses From Germany, 61 FR 38175 (July 23, 1996); Certain Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Administrative Review, 61 FR 18547, 18551 (April 26, 1996); Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review, 62 FR 18390 (April 15, 1997); Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13177 (March 18, 1998).

In the preliminary results, we considered this issue and concluded that Hoogovens' U.S. sales through HSUSA satisfied at least two out of the three criteria the Department uses to determine whether sales are EP, *i.e.*, method of shipment and customary channel of trade. In regard to the third criterion, the affiliate's role in the sales process, we determined that HSUSA did not engage in the types of activities the Department considers in classifying U.S. sales as CEP, such as: taking title to the subject merchandise, maintaining inventory, conducting customer credit checks, financing sales, providing technical service, receiving compensation based on price or quantity, and issuing order confirmations and invoices. In addition, HSUSA received payments from customers only in exceptional circumstances, i.e., when customers lack the capacity to make wire transfers. The Department invited additional information on whether the U.S. affiliate acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer in the United States. See Preliminary Results, 63 FR at 47228–29.

In the instant review, the sales in question were made prior to importation to unaffiliated customers in the United States. The fact that the subject merchandise was shipped directly from Hoogovens to the unaffiliated U.S. customers and that this was the customary commercial channel between these parties is not disputed. The issue is whether HSUSA's role in the sales process was incidental or ancillary to the sale, i.e., limited to that of a processor of sales-related documentation and a communications link.

The record in this case shows that HSUSA was involved in the sales process as a facilitator, processor of documentation and a communications link, and that the preponderance of selling functions involved in U.S. sales occurred in the Netherlands. This finding is consistent with the Department's practice in other cases cited by petitioners. In contrast with the respective roles of the producer and its U.S. affiliate in Spanish Wire Rod, HSUSA has no authority to negotiate prices, nor did it initiate contact with the U.S. customers on its own authority. In addition, we note that the petitioners' citation to Korean Flat Products is not relevant here. In Korean Flat Products, one of the U.S. affiliates had the authority to write and sign sales contracts, while another performed significant after-sale support functions. Neither of these conditions applies in this case.

While HSUSA writes contracts on behalf of Hoogovens, it merely records the agreement reached between Hoogovens and its customer. It has no authority to approve the terms. Although the Department's verification report paraphrased a Hoogovens official as stating that ''HSUSA is the primary contact with Hoogovens' customers but needs final approval from Hoogovens on sales details it negotiates with the customers,'' (Hoogovens Verification Report at 4) a preponderance of the evidence nevertheless shows that HSUSA is a facilitator and communications link between U.S. customers and Hoogovens in negotiating sales contract terms.

Hoogovens sales representatives visited U.S. customers at least once a year, accompanied by HSUSA officials, who arranged the visits. U.S. customers visited Hoogovens either annually or biannually. Hoogovens concluded annual contracts with its U.S. customers in October or November, setting base prices for the first quarter or half of the coming year and annual quantities. These negotiations usually occurred in the United States, and occasionally in the Netherlands, depending on the schedule of customer visits to Hoogovens. HSUSA served as the intermediary between U.S. customers and Hoogovens, relaying customer price quotes and quantities to the Netherlands and advising Hoogovens whether the quotes were reasonable on the basis of HSUSA's research into market conditions. HSUSA then transmitted Hoogovens' replies to the customer. The record shows that HSUSA was in constant daily communication with Hoogovens. HSUSA had no independent authority to set prices or accept orders. When agreement was reached between Hoogovens and the customer, HSUSA drew up and signed the sales contract on behalf of Hoogovens. Hoogovens issued an order confirmation to the customer. Customers indicated by facsimile the schedule of desired delivery dates, either directly to Hoogovens or through HSUSA. Hoogovens arranged for shipment to the United States. HSUSA processed the U.S. Customs declarations. During the POR, HSUSA acted as the importer of record for some shipments, while for others Hoogovens was the importer. In those cases in which the terms of sale required arranging for U.S. internal freight, HSUSA made the arrangements with freight forwarders. Hoogovens issued the invoices, performed credit checks, financed customer credit, and recorded the sales in its accounts. Most customers paid Hoogovens directly by wire transfers. HSUSA received payments by check in a small number of instances from customers lacking wire transfer facilities, and remitted payment to Hoogovens by wire after the checks cleared.

Although the agency agreement authorizes HSUSA to solicit new customers and orders, there is no indication that this was a substantial function during this review, as Hoogovens correctly pointed out that its U.S. customer base for the subject merchandise has not changed between this review and the preceding ones.

Second, HSUSA's role in after-sale support functions is limited to facilitating visits by Hoogovens' service technician and serving as a communications link to relay complaints. If there were any problems with the quality of the merchandise, HSUSA relayed customer complaints to Hoogovens. HSUSA sales representatives discussed quality issues with customers during their quarterly vists. HSUSA made arrangements for U.S. technical service visits by the technician based in the Netherlands. All technical services were provided by Hoogovens. U.S. customers communicated directly with Hoogovens regarding post-sale price adjustments for quality defects or unacceptable variances in coil weights. U.S. customers also communicated directly with Hoogovens regarding new applications and trial runs.

Based upon the functions performed by Hoogovens and HSUSA, we conclude that HSUSA's role in the sales process was to act as a processor of documentation and a communications link. Therefore we have continued to treat Hoogovens' sales as EP sales in this case.

Comment 2: Deduct Indirect Selling Expenses

Petitioners point out that Hoogovens reported the indirect selling expenses (ISE) incurred by HSUSA in the field for ISE incurred in the Netherlands (DINDIRSU), and ask the Department to deduct DINDIRSU in calculating CEP if the Department reclassifies the U.S. sales that were reported as EP.

Hoogovens responds that if the Department deducts HSUSA's ISE, it should take care not to deduct ISE incurred in the Netherlands from the CEP, in accordance with the Department's practice of deducting only expenses associated with economic activity in the United States.

Department's Position: As we have not reclassified EP sales, these arguments are moot.

Comment 3: Level of Trade of CEP Sales

Hoogovens argues that if the Department reclassifies the sales reported as EP as CEP, it must reconsider its determination that all of the sales were at the same level of trade (LOT), and should either make a CEP offset to normal value or it should not deduct certain expenses incurred in the Netherlands from CEP in its margin calculations.

Department's Position: As we have not reclassified EP sales, these arguments are moot.

Comment 4: Date of Sale

Petitioners argue that the Department should use the invoice date as the date of sale for all of Hoogovens' home market sales. For most of its home market sales, Hoogovens reported the date of long-term contracts as the date of sale. Petitioners argue that the record shows that these contracts did not contain binding quantities, and that the sales database shows that the quantities sold sometimes deviated from the amount specified in the contracts.

Hoogovens responds that the Department should continue to use the reported dates of sale for the final results, pointing out that at verification the Department found no discrepancies in Hoogovens' reported date of sale and verified that the price and quantity were established in the contract for all relevant home market sales examined, taking into account that deviations in quantity up to ten percent are considered normal in the steel industry. Hoogovens considers it ironic that petitioners are now making this argument, when in the previous review they made the opposite argument in objecting to Hoogovens' initial use of the invoice date as the date of sale (a change from previous practice in response to the Department's new regulations, which was reversed in a supplemental response). Hoogovens also reports that in responding to petitioners' comments, it found an error in coding the date of sale for one quarter of a customer's contracts.

Department's Position: We agree with Hoogovens. Its methodology for determining the date of sale in this review is consistent with the three previous reviews. Further, in this review the Department verified that long-term contracts established the prices and quantities.

In regard to the clerical error reported by Hoogovens in its rebuttal brief, in light of the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in NTN Bearing Corp. v. United States, Slip. Op. 94–1186 (Fed. Cir. 1995) (NTN), we have adopted the following policy for correcting clerical errors of respondents brought to our attention after the preliminary results. We accept corrections of such errors if all of the following conditions are satisfied: (1) the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. See Roller Chain, Other Than Bicycle From Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 63671 (November 16, 1998); Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42834 (August 19, 1996).

In this case, conditions two, three and four are not met. Hoogovens did not avail itself of the earliest reasonable opportunity to correct the error. In its corrections letter submitted at the beginning of verification (Verification Exhibit 1), Hoogovens reported an error in the date of sale for some of the sales in question here, but gave the wrong date as the correction. In addition, the corrections at issue were submitted in the rebuttal brief, rather than the case brief, and are thus too late. Moreover, while the number of shipments reported on both occasions as having incorrect dates of sale is the same, there are some differences between the two lists in which sales are included. We therefore conclude that the later corrections list is not reliable. Consequently, we have not made these corrections to the date of sale.

Comment 5: Exclude Movement Expenses from CEP Profit Calculation

Petitioners state that the Department should exclude movement expenses from the denominator of the ratio used to determine the profit to be deducted from CEP sales, on the grounds that in U.S. Steel Group, the CIT held that ''movement expenses may not be included in the denominator of the ratio to be applied to actual total profit.''

Hoogovens rejoins that pending the resolution of the remand in U.S. Steel Group, the Department should not depart from the methodology used in the preliminary results. Hoogovens submits that the statutory reference to all expenses incurred in the production and sale of the subject merchandise must be read to include movement expenses, which are an essential element of making any sale. In addition, Hoogovens notes, the court appeared concerned that the numerator in the allocation of total profit to CEP sales, CEP selling expenses (''CEPSELL''),

should be in symmetry with the denominator, total selling expenses (''TOTEXP''). Hoogovens argues that it is not clear that the statute requires such symmetry, pointing out that the purpose of the CEP profit calculation is to determine the amount of profit allocable to selling activities in the United States, which is then deducted from the U.S. price. Hoogovens contends it is reasonable for the Department to conclude that the statute does not intend to allocate profit to the cost of moving goods within the United States, even though such movement costs are included in the calculation of the respondent's total expenses in both markets. Thus, Hoogovens concludes, symmetry in mathematical calculations does not comport with or serve the statutory goal, and the Department should not revise it methodology for the final results in this review.

Department's Position: We agree with Hoogovens. The Department is currently appealing the CIT decision in U.S. Steel Group, and will continue to follow its policy of including movement expenses in the denominator of the CEP profit calculation in accordance with the Department's interpretation of section 772(f) of the Act. See Policy Bulletin 97.1, ''Calculation of Profit for Constructed Export Price Transactions,'' (September 4, 1997).

Nothing in the statute or its legislative history requires that the Department include exactly the same kinds of expenses in total United States expenses as it includes in total expenses for purposes of allocating an amount of profit for constructing an export price. To the contrary, the statute narrowly defines ''total United States expenses'' (the numerator) to include only commissions, direct and indirect selling expenses, expenses assumed by the seller on behalf of the purchaser, and the cost of further manufacturing. See sections 772(f)(2)(B) and 772(d)(1) and (2). Thus, the statute prohibits the inclusion of movement expenses in the calculation of total United States expenses. In our view, the exclusion of express language on movement expenses demonstrates that Congress did not intend that Commerce deduct any profit allocated to the cost of moving goods for purposes of constructing an export price. Furthermore, the statute cannot be interpreted to require symmetry in the CEP profit ratio (i.e., that the same types of expenses be included in both the numerator and denominator) because the statute provides that other expenses, other than movement expense, shall be included in the total expenses denominator, but does not require inclusion of such expenses in the U.S. expense numerator (e.g., U.S. import duties and export taxes; see sections 772(c)(2)(A) and (B)).

Unlike the definition of ''total United States expenses,'' the statute does not further define ''total expenses'' incurred in the production and sale of the merchandise. In fact, the CIT acknowledged that ''the language defining total expenses is not entirely clear as to whether movement expenses should be included in the total expenses denominator.'' *U.S. Steel Group*, at 3. However, section 772(f) of the Act requires the Department to use ''total actual profit'' in calculating the CEP profit deduction. To the extent that the producer/exporter and its U.S. affiliates incur movement expenses to deliver the merchandise to customers, these expenses must be included in total expenses in order to calculate actual profit. Indeed, this interpretation is based on the axiom that total profit equals total revenue minus total expenses, and resolves any confusion surrounding the definition of total expenses in favor of the inclusion of movement expenses. Furthermore, we do not believe it is reasonable to interpret the term ''total expenses'' one way in calculating a respondent's total actual profit, and another way in summing expenses for the denominator of the CEP profit ratio. Rather, a reasonable interpretation requires a unified reading and application of the CEP profit provisions in which the meaning of ''total expenses'' does not vary.

To calculate the profit to be allocated to CEP sales, total actual profit is multiplied by the ratio of total United States expenses to total expenses. Thus, no portion of total profit is allocated to U.S. movement expenses for purposes of calculating the CEP, but all movement expenses, like any other expense incurred by the seller, must be included in total expenses in order to calculate total profit accurately. Because the statutory goal of accurately calculating total profit and reasonably allocating a portion of the total profit to CEP sales is served by the Department's current CEP profit methodology, we have continued to apply the methodology established in Policy Bulletin 97.1.

Comment 6: Offset for Cost of Financing Cash Deposits

Hoogovens claims that the Department's decision in the previous review to deny an offset to its reported U.S. indirect selling expenses (ISE) for the cost of financing cash deposits of estimated antidumping duties during the POR is incorrect, and that the Department should grant this adjustment for the reasons stated in the bearings determinations. *See 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 and Termination in Part*, 62 FR 11825, 11826–30 (March 13, 1997).

Hoogovens submits that the CIT has consistently upheld the Department's exercise of its discretion to make this adjustment, citing *Timken Company v. United States*, Ct. No. 97–04–00562, Slip. Op. 98–42 at 4–10 (CIT, July 2, 1998); *Timken Company v. United States*, 989 F. Supp. 234, 250–55 (CIT 1997). Finally, Hoogovens claims this adjustment can be readily calculated using data already on the record.

Petitioners urge the Department to adhere to its decision to deny this adjustment, citing *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 Review*, 63 FR 3320, 33348 (June 18, 1998) (''AFBs'') and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan; Final Results of Antidumping Duty Administrative Review, 63 FR 20585, 20595* (April 27, 1998). Petitioners point out that Hoogovens does not address any of the Department's reasons for denying offsets for the cost of financing cash deposits, and instead cities one of the older cases whose methodology the Department has rejected. Petitioners conclude that the request for an adjustment should be denied because Hoogovens provides no reason for the Department to change its policy.

Department's Position: We agree with petitioners that we should continue to deny an adjustment to Hoogovens' U.S. ISE for expenses which Hoogovens claims are related to the financing of cash deposits. The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress granted the administering authority broad 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, allowed deductions of such expenses in past reviews of the orders on antifriction bearings. However, we have reconsidered our position on this matter and have 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 U.S. price. 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. 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. *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). 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 antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. Money is fungible within a corporate entity. Thus, 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. 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 inevitable.

So, while under the statute we may allow a limited exemption from deductions from U.S. price for cash deposits and legal fees associated with participants in dumping cases, we do not see a sound basis for extending this exemption to 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 participants in a dumping case.

Finally, we have previously determined that we should not use an imputed amount theoretically 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 have no choice about paying 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.

Comment 7: Interest Rate for Imputed U.S. Credit Expenses

Hoogovens states that in all previous reviews, the Department calculated Hoogovens' U.S. imputed credit expenses using the weight-averaged interest rate on Hoogovens' dollar-denominated short-term loans in the Netherlands to finance U.S. sales. Accordingly, Hoogovens used the same methodology in this review, and the Department verified the interest rate used. However, in the preliminary results the Department recalculated U.S. credit expenses using the interest rate paid by HSUSA on loans used for another purpose. Hoogovens claims that the Department's determination is illogical, inconsistent with the purposes of its policy, and directly contradicts past practice.

Hoogovens argues that when an exporter incurs credit expenses for sales to U.S. customers in dollars, in effect it is extending credit to its purchasers on dollar terms, citing *Mitsubishi Heavy Industries, Ltd.* v. *United States,* Slip. Op. 98–82 (CIT, June 23, 1998) and *Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555 (June 28, 1995). Accordingly, Hoogovens argues, the Department uses the actual dollar-based interest rate of the exporter as the best measure of the exporter's imputed credit expenses, and only uses publicly available information to establish an appropriate rate when the exporter does not have dollar-denominated borrowings.

Hoogovens states there is no reason to use HSUSA's loans made for other purposes, which represent a theoretical cost of borrowing, when the actual cost of extending credit on U.S. sales is available on the record. Hoogovens notes that the Department has previously rejected the methodology it advances here, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 12725, 12742 (March 16, 1998) (''Steel from Canada''), in which the U.S. affiliate maintained a dollar-denominated line of credit, but the Department rejected the interest rate on this credit in favor of a surrogate rate.

Petitioners support the Department's determination on the grounds that loans incurred in the United States best reflect the cost of selling to U.S. customers. They point out that in the current review of Steel from Canada, the Department instructed the respondent to recalculate credit expenses using the interest rate at which the U.S. affiliate actually borrowed the funds.

Department's Position: We agree with Hoogovens that, in accordance with the Department's established policy and practice, we should have accepted the interest rate on its short-term dollar-denominated loans taken out by Hoogovens rather than the rate received by HSUSA. Accordingly, for the final results we have used the reported imputed U.S. credit expenses.

Comment 8: Credit Expenses on Unshipped Sales

Hoogovens argues that the Department should have deducted credit expenses on unshipped home market sales on the grounds that these sales are included in the calculation of the dumping margin. Hoogovens claims there is no logical reason for imputing these expenses on shipped sales but not on unshipped sales. Further, Hoogovens argues that its method of reporting these expenses using the average days to payment on a customer-specific basis has been previously accepted by the Department and is reasonable.

Petitioners point out that there is no actual credit expense incurred on unshipped sales. They argue that if the Department accepts Hoogovens' claim and allows an adjustment for credit expense, then it must also increase the gross price of unshipped sales to account for freight revenue on them. Petitioners note that such an adjustment would be consistent with Department practice.

Department's Position: We agree with Hoogovens. The Department recalculated Hoogovens' reported credit expenses on home market sales in order to correct the payment dates for some sales. To calculate imputed credit expenses on receivables, we take the

difference between the date of payment and the date of shipment and multiply by the daily short-term interest rate and the gross price, obtaining the per unit expense. However, in the case of unshipped quantities, there is neither a shipment date nor a payment date. In previous reviews the Department accepted Hoogovens' claimed credit expenses on unshipped sales, calculated on the basis of the customer-specific average number of days between shipment and payment. Since we are including these sales in the margin calculation, it is reasonable to make a deduction for imputed credit expenses. This is consistent with the Department's practice in Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30324 (June 14, 1996).

We disagree with petitioners that inland freight should be added to the reported gross price. We verified that the reported price already includes freight in those cases where the terms of sale include inland freight.

Comment 9: Correction of Ministerial Error

Petitioners point out that an error found at verification in reporting international freight and brokerage expense for one U.S. sale was not corrected in the preliminary results. Hoogovens responds that the freight expense by petitioners is incorrect, and provides the figures calculated by the Department at verification. Hoogovens Verification Report at 20.

Department's Position: We agree with petitioners that an error found at verification was not corrected in the preliminary results through an oversight. However, the international freight charge suggested by petitioners is inconsistent with the amount calculated by the Department at verification. *See* Verification Exhibit 27. We have corrected the international freight and brokerage expenses for this sale in the final results of this review.

Comment 10: Reimbursement

Petitioners argue that the Department should apply its reimbursement regulation. They note that during part of the POR, HSUSA was the importer of record and was reimbursed by Hoogovens for cash deposits paid against antidumping duties to be assessed. Petitioners claim that the restructuring of Hoogovens' U.S. operations was in essence financial intermingling aimed at avoiding the application of the reimbursement regulation.

During the remainder of the POR, Hoogovens served as the importer of record. Petitioners claim that from a commercial standpoint, there has been no substantive change, and that the subject merchandise is still being sold to U.S. customers at unremediated dumped prices. Petitioners point out that in previous reviews of this proceeding, the Department has required the importer to demonstrate that it has the financial resources to pay antidumping duties. See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 63 FR at 13214 (March 18, 1998). Petitioners argue that these resources must be acquired for legitimate business needs rather than for the purpose of paying antidumping duties, and that all of the Department's prior work will have been for naught if a remibursement finding can be avoided simply by listing the foreign producer as the importer of record. Consequently, petitioners conclude, the Department should find that reimbursement is occurring whenever the foreign producer is also the importer of record. Petitioners claim that the Department recognized that the reimbursement regulation may be interpreted to apply in such situations in Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 33041, 33044 (June 17, 1998). They also cite the statement in the SAA that ''Commerce has full authority under its current regulations (19 CFR 353.26) to increase the duty when an exporter directly pays the duties due, or reimburses the importer, whether independent or affiliated, for the importer's payment of duties.'' SAA at 886. Petitioners conclude that the interpretation that sales for which Hoogovens acted as the importer of record fall within the reimbursement regulation is the only interpretation that will prevent the remedial effects of the antidumping law from being frustrated.

Hoogovens replies that the Department lacks the statutory authority to apply the reimbursement regulation on the basis of affiliated party transactions. While Hoogovens acknowledges that the CIT rejected this argument in Hoogovens' appeal of the final results of the first review, Hoogovens believes that the correct interpretation of the Department's authority is that expressed by the Court of Appeals in footnote 2 of its opinion in *The Torrington Co.* v. *United States,* 127 F.3d 1077, where it stated, ''the statute does not seem to authorize a further assessment of duty to the same importer on the theory that a foreign supplier may have helped an importer with its duty burden.''

Hoogovens argues there is substantial verified evidence on the record in this review to support the Department's decision not to apply the reimbursement regulation in the preliminary results. This evidence includes the Agency Agreement, the refund by HSUSA to Hoogovens of the amount of antidumping duties calculated by the Department in its final results in the 1993/94, 1994/95 and 1995/96 administrative reviews, and HSUSA's assumption of liability for antidumping duties for the period 1993–96, as shown in its audited 1997 financial statements. Accordingly, Hoogovens argues, the Department should not apply the regulation to sales for which HSUSA was the importer of record.

Hoogovens notes that the CIT recently affirmed the Department's decision not to apply the reimbursement regulation in the final results of the second administrative review (1994/95). *Bethlehem Steel Corp.* v. *United States,* Slip Op. 98–145 at 13–17 (October 14, 1998), and argues that petitioners have failed to advance any argument or evidence that would support a different outcome in this review, continuing to raise the same arguments regarding the restructuring of Hoogovens' U.S. operations that they raised unsuccessfully in previous reviews.

Hoogovens points out that it has entered into a joint venture with Weirton Steel Company to build a galvanizing plant in Indiana, which was a major element of Hoogovens' restructuring, which also included the transfer of HSUSA of the Rafferty-Brown companies. As a result, HSUSA's consolidated sales revenues have substantially increased. Hoogovens argues that this restructuring was intended to organize its U.S. holdings in the same manner as in other countries, and are legitimate business arrangements which do not constitute any basis to double its antidumping duty liability.

Hoogovens argues further that applying the reimbursement regulation in situations where the exporter acted as importer of record would mean treating those duties as a cost, and double-counting those duties in the calculation of a respondent's antidumping duty liability, which is contrary to the Department's longstanding policy. Hoogovens rejects petitioners' interpretation of the SAA at 886, pointing out that they fail to explain why this reference to an exporter who ''directly pays the duties due'' necessarily refers to an exporter who is also the importer. Hoogovens claims

there is nothing in the SAA to suggest such a reading, and points out that the SAA states that the Department ''intends no change in its practice in this area.'' SAA at 886. Hoogovens states its is unaware of any instance prior to the SAA in which the Department applied the regulation where the exporter was the importer of record, and concludes there is no basis for petitioners' argument that their interpretation was ''the very one adopted'' by the Congress and the administration in the SAA. Moreover, Hoogovens points out, the SAA expressly rejects the concept of duty as a cost (SAA at 885), suggesting that this undermines petitioners' interpretation. Finally, Hoogovens notes that petitioners appear to argue that the Department should apply the reimbursement regulation simply because it has found reimbursement in a previous review, and asserts that Hoogovens is entitled to take steps to reduce its antidumping duty liability from review to review.

Department's Position: We disagree with petitioners that the Department should invoke 19 CFR 351.401(f), the reimbursement regulation, in this case. Consistent with our findings in the previous review, we find in the current review that the amended agency agreement between HSUSA and Hoogovens continues in force, and that HSUSA, pursuant to its contractual obligations, continues to repay advances for antidumping duty deposits. Further, for those sales in which HSUSA was the importer of record, we find that HSUSA (1) continues to be solely responsible for the payment of the antidumping duties in this review, and (2) is able to generate sufficient income to pay the antidumping duties to be assessed in this review. See Exhibit A–30 (Agency Agreements) of Hoogovens' January 30, 1998, supplemental response (Proprietary Version); HSUSA's audited financial statements in Exhibit A–11 (Hoogovens Steel Division Audited Financial Statements) of Hoogovens' Section A response (Proprietary Version, October 6, 1997) and in Verification Exhibit 2 of the verification at HSUSA on July 15, 1998; and Exhibit B–31 (Refund of Duties) in Hoogovens' May 6, 1998 supplemental response (Proprietary Version). Further, the corporate restructuring of HSUSA entailed entering into a joint venture with Weirton Steel Company and the transfer of the Rafferty-Brown companies to HSUSA. As the Department has recognized, and the Courts have affirmed, affiliated companies can transfer funds for a variety of reasons, unrelated to reimbursement of antidumping duties. *See Torrington Co.* v. *United States,* 127 F.3d 1077 (Fed. Cir. 1997). As in the previous review, the Department does not construe this restructuring to be inappropriate financial intermingling or reimbursement within the meaning of 351.402(f) as petitioners suggest. In the present case, the facts and circumstances surrounding the corporate restructuring are clear and consistent with the purposes of the regulation.

Finally, we disagree with petitioners that the reimbursement regulation is applicable where the importer and exporter are the same corporate entity. Our decision as to reimbursement is based upon our regulatory interpretation of 19 CFR 351.401(f), which is that two separate corporate entities must exist in order for the Department to invoke the reimbursement regulation. See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 33041, 33044 (June 17, 1998). While we recognize that petitioners' position may be a permissible interpretation of the regulation, the Department continues to believe that our interpretation is more appropriate. Accordingly, for these final results, we have not invoked the Department's reimbursement regulation with respect to Hoogovens.

Comment 11: Level of Trade

Hoogovens urges the Department to maintain its conclusion in the preliminary results that there are no level of trade (LOT) differences for any sales. Hoogovens points out that this conclusion was based on an exhaustive investigation of Hoogovens' selling functions and channels of distribution in both the U.S. and home markets. The LOT issue was addressed in the original and two supplemental questionnaires, and the Department conducted extensive interviews with sales personnel and technical service and research managers during its verifications in both IJmuiden and Scarsdale. Hoogovens notes that the Department reviewed the record evidence with respect to nine different selling functions and activities performed by Hoogovens: (1) Strategic and economic planning; (2) market research; (3) advertising; (4) inventory maintenance; (5) post-sale warehousing; (6) freight and delivery arrangements; (7) technical support services, warranty services and customer-specific R&D support; (8) computer, legal, and accounting assistance; and (9) procurement services. The only observations the Department noted were: (1) Larger customers received more frequent visits from sales personnel, and (2) home market automotive customers received a higher level of service than other end users, though sales are at the same stage of marketing as all other home market sales.

Hoogovens argues that the record evidence does not even approach a showing of the level of differences in selling functions performed for different customers required for a finding of different LOTs under existing practice; citing AFBs at 33331; Certain Stainless Steel Wire Roads from France; Final Results of Antidumping Duty Administrative Review, 63 FR 30185 at 30190 (June 3, 1998), and *Pipe from Taiwan* at 1439.

Department's Position: Based on our examination of the selling functions performed for U.S. and home market ales, we agree Hoogovens that all sales are made at the same level of trade. Although in the preliminary results of review the Department invited the filing of additional information and comment on this issue, petitioners did not comment.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Hoogovens Staal B.V.	8/1/96–7/31/97	0.92

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cast deposit rate for the reviewed company will be the rate for that firm as stated above; (2) 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 (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cast deposit rate will be 19.32 percent. This is the ''all others'' rate from the amended final determination in the LTFV investigation. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 Fed. Reg. 47871 (September 11, 1996). 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. 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 sections 751(a)(1) and 771(i)(1) of the Act and sections 351.213 and 351.221 of the Department's regulations.

Dated: March 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–5945 Filed 3–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Initiation of Antidumping Duty Investigation: Creatine From the People's Republic of China

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

EFFECTIVE DATE: March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Marian Wells, Blanche Ziv or Rosa Jeong, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6309, (202) 482–4207, or (202) 482–3853, respectively.

Initiation of Investigation

The 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 of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

The Petition

On February 12, 1999, the Department received a petition filed in proper form by Pfanstiehl Laboratories, Inc., referred to hereinafter as ''the petitioner.'' The petitioner filed supplemental information to the petition on March 1, 1999.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of creatine from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it represents, at a minimum, the required proportion of the United States industry (*see* Determination of Industry Support for the Petition section below).

Scope of Investigation

For purposes of this investigation, the product covered is commonly referred to as creatine monohydrate or creatine. The chemical name for creatine covered under this investigation is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service (CAS) registry numbers for this product are 57–00–1 and 6020–87–7. Pure creatine is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. The merchandise subject to this investigation is classifiable under subheading 2925.20.90 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a