Dated: July 26, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

Appendix

Decision Memo

1. Application of Surrogate Financial Ratios
2. Valuation of Garlic Seed
3. Valuation of Ocean Freight
4. Fixed Overhead Calculation
5. Selling, General and Administrative Expenses and Profit Calculation

[FR Doc. 04–17566 Filed 8–2–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France

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

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

SUMMARY: On January 27, 2004, the Department of Commerce (the Department) published the preliminary results of its first administrative review of the antidumping duty order on low enriched uranium (LEU) from France. The review covers one producer of the subject merchandise. The period of review (POR) is July 13, 2001, through January 31, 2003. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

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

FOR FURTHER INFORMATION CONTACT: Carol Henninger or Constance Handley, at (202) 482–3003 or (202) 482–0631, respectively; AD/CVD Enforcement, Office 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2004, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on LEU from France. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France,* 69 FR 3883 (January 27, 2004) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results.* On February 27, 2004, we received case briefs from the sole respondent, Eurodif S.A., Compagnie Génerale Des Matiéres Nucleaires, S.A. and COGEMA, Inc. (collectively, COGEMA/Eurodif), and the petitioners, the United States Enrichment Corporation and USEC Inc. (collectively, USEC). COGEMA/Eurodif submitted its rebuttal brief on March 5, 2004, and USEC submitted its rebuttal brief on March 16, 2004. Upon request from the Department, USEC and COGEMA/Eurodif submitted additional comments regarding the treatment of countervailing duties on March 2, 2004, and March 9, 2004, respectively. A public hearing was held on March 17, 2004.

Scope of the Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end-user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* to James J. Jochum, Assistant Secretary for Import Administration, from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in Room B–099 of the main Commerce building, and a public version of it can also be accessed directly on the Web at *www.ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made adjustments to the methodology used in calculating the final dumping margin in this proceeding. The adjustments are discussed in detail in the *Decision Memorandum.*

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of July 13, 2001, through January 31, 2003:

Producer—COGEMA/Eurodif
Weighted-Average Margin (Percentage)—5.43

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where

the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of LEU from France entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) For companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 19.95 percent, the ''All Others'' rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

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

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

Dated: July 26, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix I—Proposed Treatment of Countervailing Duties as a Cost

Background

Section 772(c)(2)(A) of the Tariff Act of 1930, as amended, requires that in calculating dumping margins, the Department must deduct from prices in the United States any ''United States import duties'' or other selling expenses included in those prices.[1] The issue has been raised whether this provision requires the Department to deduct countervailing duties (''CVDs'') imposed under section 772 of the Trade Act of 1974 from U.S. prices in calculating dumping margins.[2]

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

Comments in Support of Deducting Countervailing Duties

Commenters in favor of deducting CVDs from U.S. price argue that the plain language of section 772(c)(2)(A) requires such deduction. Section 772(c)(2)(A) states that U.S. price shall be reduced by ''the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States * * *.'' These commenters contend that CVDs, in particular CVDs to offset domestic subsidies, are costs, charges, expenses or import duties incidental to bringing merchandise into the United States. Thus, those CVDs must be deducted.

More specifically, these commenters argue that the statutory phrase ''United States import duties'' encompasses CVDs. They contend that there is no basis for interpreting the term ''United States import duties'' as referring only to ''normal'' or ''regular'' duties. These commenters point out that the Antidumping Act of 1921 (the ''1921 Act'') identified three types of duties: ''special dumping duties,'' ''regular customs duties,'' and ''United States import duties.'' According to the commenters, ''United States import duties'' therefore means something different than ''normal'' or ''regular'' duties. The commenters assert that this term actually encompasses all duties, special and regular,[3] so that the statutory direction to deduct ''U.S. import duties'' requires the deduction of CVDs.

Furthermore, these commenters note that section 772(c)(1)(C) requires the Department to increase U.S. price by the amount of any CVD that was imposed to offset an export subsidy. According to these commenters, section 772(c)(1)(C)—and the corresponding exception in section 772(c)(2)(A) for CVDs that fall under 772(c)(1)(C)—would have been superfluous if Congress had not already intended CVDs normally to be deducted from U.S. price. In other words, Congress set a general rule that CVDs are to be deducted from U.S. price, but altered this general rule by creating the exception for CVDs for export subsidies. Thus, these commenters contend that the doctrine of *expressio unius est exclusio alterius*[4] applies. Under this doctrine, the express statutory exception in section 772(c)(2)(A) for CVDs for export subsidies indicates that Congress intended that section to encompass CVDs for non-export subsidies.

According to these commenters, the doctrine of *expressio unius* also applies when one looks at other provisions of section 772. Section 772(c)(2)(B) instructs the Department not to deduct from U.S. price the amount of any export tax, duty or other charge that is imposed by the exporting country to offset a countervailable subsidy. On the other hand, the Department will deduct the amount of any export tax, duty or other charge that is imposed by the exporting country for reasons other than to offset a countervailable subsidy. Thus, according to some commenters,

[1] 19 U.S.C. 1677a(c)(2)(A). This statutory deduction existed prior to the passage of the Uruguay Round Agreements Act (URAA), and the URAA did not modify it in any respect.

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

[3] At the same time, these commenters argue that the 1921 Act's identification of different types of duties is ultimately irrelevant to the issue of deducting CVDs because the 1921 Act only referred to types of dumping duties, not countervailing duties.

[4] ''To say one thing is to exclude the alternative.''

the statute's scheme for the treatment of measures to offset countervailable subsidies is clear. Section 772(c)(2)(B) addresses export taxes, duties or other charges imposed by the exporting country, whether to offset a countervailable subsidy or for other purposes. Section 772(c)(1)(C) addresses CVDs imposed to offset export subsidies. The only type of offset measure not expressly addressed is a CVD imposed to offset non-export subsidies. Thus, according to these commenters, it is reasonable to conclude that this type of measure is the type addressed in section 772(c)(2)(A) and should be deducted in accordance with that provision.

The commenters supporting deduction of CVDs from U.S. price recognize that the Department's current practice is not to deduct. However, these commenters note that, under a general principle of administrative law, the Department may change its practice as long as it provides a reasoned explanation for such change.[5] This principle applies even when courts have sustained the Department's current practice.

Some commenters argue that deducting CVDs from U.S. price would not constitute a double remedy to the domestic industry, in contrast to the claims of the parties opposing such deductions. Several commenters argue that deducting CVDs is no more double-counting than deducting other costs and expenses incurred by a seller to the United States. Some commenters note that under their proposal, the Department would only deduct CVDs for domestic subsidies when the terms of the sale obligate the seller (or related importer) to pay the costs of the CVDs. Thus, the change in practice would not increase dumping margins to the extent hypothesized by the opposing parties. Moreover, there is no ''recursiveness'' (double-counting) problem with respect to deduction of CVDs from U.S. price (as there might be if the Department deducted antidumping duties from U.S. price) because recursiveness is only a problem when the same determinant (such as the dumping margin) is present on both sides of the equation. This is not the case with the deduction of CVDs from U.S. price, because the ultimate antidumping duty rate will not affect the CVD rate.

Some commenters also argue that deduction of CVDs from U.S. price is necessary in order to make the Department's practice consistent with Customs' practice. Customs, in determining the dutiable value of a good, deducts the amount of any CVDs.[6] According to some commenters, the fact that the Department does not deduct CVDs from U.S. price results in a U.S. price that is greater than Customs' dutiable value of the good. When the dumping margin is applied to U.S. price, the result is a greater antidumping duty amount than when Customs applies that same margin to the smaller dutiable value. According to these commenters, because Customs collects antidumping duties on the basis of dutiable value, the Department's failure to deduct CVDs from U.S. price results in Customs collecting less than the full amount necessary to offset the margin of dumping found by the Department.

Several commenters claim that deducting CVDs from U.S. price would be consistent with the international obligations of the United States. These commenters note that Article VI(5) of the GATT is inapplicable because it only prohibits the imposition of both antidumping and countervailing duties for the same situation of dumping or export subsidization. It does not address CVDs for non-export subsidies, and therefore it does not prohibit the deduction of CVDs for non-export subsidies from U.S. price. These commenters also contend that such deduction would not violate the obligation of Article VI(2) of the GATT and Article 9.3 of the Antidumping Agreement that the amount of antidumping duties must not exceed the margin of dumping. According to these commenters, the deduction would make an adjustment for a cost of U.S. sales and therefore would have an equivalent effect on both the margin and the amount of duties. Some commenters also note that the laws of major U.S. trading partners authorize the deduction of CVDs when calculating dumping margins. Therefore, under the current practice, U.S. domestic industries are at a disadvantage relative to the industries of other countries.

Finally, some commenters assert that a deduction for CVDs is necessary in order to reflect the true cost of selling in the United States. They note that payment of CVDs is a condition to merchandise entering the United States. Additionally, some commenters contend that certain foreign producers are simply absorbing the costs of CVDs. A deduction for CVDs in antidumping calculations is necessary in order to level the playing field when foreign producers absorb the CVD costs. According to these commenters, the Department should deduct CVD deposits, as well as final assessed CVD amounts, because deposits are also a cost of bringing merchandise into the United States.

Comments in Opposition To Deducting Countervailing Duties

Many commenters argue that the term ''United States import duties'' in section 772(c)(2)(A) does not include countervailing duties. They claim that ''United States import duties'' refers only to ordinary duties, not to remedial duties such as CVDs. For example, one commenter argues that the use of the two terms ''import duties'' and ''countervailing duties'' in section 772 indicates that Congress intended the terms to have different meanings.

Some commenters point to section 777(c)(2)(B), which prohibits the Department from deducting any export tax, duty or other charge imposed by the exporting country to offset a countervailable subsidy. Because CVDs similarly offset countervailable subsidies, they argue that this shows the Congress did not intend them to be deducted from U.S. prices.

Many commenters note that the Department's long-standing practice has been not to deduct CVDs from U.S. price.[7] They note that the Department has interpreted ''United States import duties'' as including only ordinary duties and not remedial duties,[8] and that the Court of International Trade (CIT) has upheld this practice.[9]

Some commenters point out that the Department and the CIT rejected the domestic parties' arguments concerning the deduction of CVDs imposed to offset non-export subsidies in *U.S. Steel Group* v. *United States*, 15 F. Supp. 2d 892, 900 (1998). According to these commenters, the domestic parties in *U.S. Steel* argued that section 772(c)(2)(A) sets a general rule that CVDs are to be deducted from U.S.

[5] These commenters cite *Rust* v. *Sullivan*, 500 U.S. 173 (1991), and *NTN Bearing Corp.* v. *United States*, 903 F. Supp. 62 (Ct. Int'l Trade 1995).

[6] The relevant statute, 19 U.S.C. 1401a(b)(3)(B), directs Customs not to include in dutiable value the ''customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation * * *'' According to some commenters, the term ''customs duties'' is not defined—just as the term ''United States import duties'' is not defined for purposes of section 772(c)(2)(A)—but Customs interprets it to include CVDs.

[7] Some commenters suggest that the Department cannot change its long-standing practice absent a change in law or fact.

[8] Many commenters cite *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404 (April 15, 1997), in which the Department articulated the distinction between ordinary duties and antidumping or countervailing duties.

[9] *See, e.g., A.K. Steel* v. *United States*, 988 F. Supp. 594 (Ct. Int'l Trade 1997); *Hoogovens Staal BV* v. *United States*, 4 F. Supp. 2d 1213 (Ct. Int'l Trade 1998).

price, and that the exception relating to CVDs imposed to offset export subsidies, contained in section 772(c)(1)(C), is evidence of this general rule. The CIT rejected this interpretation of the relationship between sections 772(c)(1)(C) and 772(c)(2)(A). *Id.* These commenters contend that the result in *U.S. Steel Group* represents the appropriate construction of the relationship between sections 772(c)(1)(C) and 772(c)(2)(A), and that the Department should not adopt a different construction now. According to these commenters, the requirement in section 772(c)(1)(C) to add CVDs imposed to offset export subsidies cannot be used to interpret 772(c)(2)(A) as requiring the subtraction of CVDs imposed to offset non-export subsidies.

One commenter argues that the doctrine of *expressio unius est exclusio alterius* does not support the conclusion that the requirement to add CVDs for export subsidies to U.S. price implies that CVDs for non-export price must be subtracted under section 772(c)(2)(A). This commenter contends that, because section 772(c) expressly provides for either increases or reductions to U.S. price, the statute's silence with respect to non-export subsidy CVDs indicates that Congress intended these CVDs to neither increase nor reduce U.S. price.

Several commenters contend that Congress has been aware of the Department's longstanding practice of not deducting CVDs from U.S. prices and has acquiesced in this practice by never amending the statute. These commenters, argue that the Department's current practice is, therefore, consistent with congressional intent. One commenter also asserts that Congress's rejection of the treatment of antidumping duties as costs during passage of the URAA is further evidence of Congress's acceptance of the Department's current practice.[10] Additionally, several commenters point out that some members of Congress recently have proposed legislation that would require the Department to deduct CVDs from U.S. price. According to these commenters, the necessity of new legislation demonstrates that the current statutory language does not permit deduction of CVDs.

Many commenters argue that the deduction of CVDs from U.S. price would result in a double remedy to domestic industry because the CVDs effectively would be charged twice: once in the original proceeding which imposed the CVDs and once more as a factor in U.S. price, which will have the effect of increasing the dumping margin. These commenters note that the Department recognized the double-counting problem in *Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 FR 18390 (April 15, 1997). According to these commenters, deduction of CVDs would be inconsistent with the remedial purpose of the trade remedy laws and would transform remedial duties into punitive duties. The commenters cite to *A.K. Steel* v. *United States*, 988 F. Supp. 594 (Ct. Int'l Trade 1997) and *U.S. Steel Group*, 15 F. Supp. 2d 892, in which the CIT sustained the Department's decisions not to deduct remedial duties, partly because of the Department's concerns that the deductions would result in double-counting.

Several commenters argue that deducting CVDs from U.S. price would be inconsistent with the international obligations of the United States. They cite to Article VI(5) of the GATT, which prohibits countries from deducting CVDs imposed to offset export subsidization in a dumping calculation. They also cite Article 19.4 of the Agreement on Subsidies and Countervailing Measures, which provides that no CVD shall be levied in excess of the amount of the subsidy found to exist. These commenters contend that deducting a CVD in an antidumping proceeding will have the practical effect of doubling the amount of the CVD, in contravention of Article 19.4. Commenters also argue that deduction of CVDs would create an artificially low export price and consequently an inflated dumping margin, in contravention of Article 9.3 of the Antidumping Agreement. Furthermore, some commenters argue that the fact that the laws of some U.S. trading partners may provide for the deduction of CVDs is irrelevant to the question of whether the United States should adopt this practice. Other commenters assert that a change in the Department's practice would create a domino effect that would have a negative impact on world trade.

Finally, one commenter argues that there would be practical difficulties to deducting CVDs from U.S. price. According to this commenter, the retrospective duty assessment system of the United States would make timely and consistent adjustments for CVDs impossible. This commenter contends that the Department, if it chooses to deduct CVDs, would only be able to deduct final, assessed CVDs. However, CVDs are not final until after all appeals are complete. Consequently, when there are parallel antidumping and countervailing duty proceedings for the same subject merchandise, the Department would not be able to make adjustments to the dumping margin until the appeals of the CVD proceeding are complete. Such a delay would push the final antidumping determination well past the statutory deadlines, according to this commenter.

Discussion

The Department, for the several reasons explained below, has determined to continue its well-established practice of not deducting CVDs from U.S. price in calculating dumping margins. The Department's view remains that CVDs are neither ''United States import duties'' nor selling expenses within the meaning of section 772(c)(2)(A) of the Act, and therefore should not be deducted from U.S. price.

The Statute and Legislative History. Section 772(c)(2)(A) of the Act requires the Department to reduce export price and constructed export price by:

> The amount, if any, included in such price, attributable to any additional costs, charges, or expenses and *United States import duties*, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.[11]

The Meaning of ''United States Import Duties''. The term ''United States import duties'' originated in the 1921 Act.[12] The term was not defined in 1921 or in any subsequent AD or CVD legislation, and the CIT has found its meaning to be ''unclear.'' [13] In this situation, the Department's interpretation of the term is entitled to substantial deference.[14]

The legislative history of the 1921 Act indicates that AD duties, at least, are not the same as ordinary Customs duties. The Senate Report refers to AD duties as ''special dumping dut[ies]'' and refers to ordinary Customs duties as ''United States import duties.'' [15] Section 211 of the 1921 Act provides that, for the

[10] In *Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 FR 18390, 18395 (April 15, 1997), the Department noted that ''[T]he treatment of AD and CVD duties (already paid or to be assessed) as a cost to be deducted from the export price is an issue that was arduously debated during passage of the URAA and ultimately rejected by Congress.''

[11] 19 U.S.C. 1677a(c)(2)(A) (emphasis added).

[12] *See,* The 1921 Act, 19 U.S.C. 161(a) (repealed, 1979); and *Nichimen Am., Inc.,* v. *United States,* 938 F.2d 1286, 1289 (Fed. Cir. 1991).

[13] *See, AK Steel* v. *United States,* 988 F. Supp. 594, 607 (Ct. Int'l Trade 1997); and *PQ Corp.* v. *United States,* 652 F. Supp. 724, 736 (Ct. Int'l Trade 1987).

[14] *See, Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

[15] *See,* S. Rep. No. 67–16, at 4 (1921), discussed in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18,404, 18,421 (Apr. 15, 1997).

limited purpose of duty drawback, ''the special dumping dut[ies] * * * shall be treated in all respects as regular customs duties.'' [16] If ''special dumping duties'' really were considered to be just one type of ''United States import duty,'' this special provision would have served no purpose.

That ''special dumping duties'' were considered to be distinct from normal Customs duties is also indicated by the fact that section 202(a) of the 1921 Act provides that ''special dumping duties'' may be applied to ''duty-free'' merchandise.[17] In this context, ''duty-free'' must mean ''free from normal Customs duties.'' If ''duty-free'' had meant ''free from any import duties,'' that would have included antidumping duties, so that special dumping duties would have been applied to merchandise exempt from special dumping duties. Plainly, ''duty-free'' was understood to mean ''free from normal Customs duties.''

A number of commenters argue that, while Congress did distinguish ''special dumping duties'' from ''regular customs duties'' in section 211 of the 1921 Act, it used the different term ''United States import duties'' in sections 203 and 204 (which were the precursors to section 772). Thus, ''United States import duties'' must mean something other than either ''special dumping duties'' or ''regular customs duties.'' Logically, ''United States import duties'' must be a broader term that encompasses normal Customs duties and CVDs. The problem with this argument is that if ''United States import duties'' includes CVDs, then it logically must include *all* CVDs and also AD duties, thus requiring their deduction from U.S. prices. With respect to CVDs to offset export subsidies, this flatly contradicts the statute. With respect to AD duties, this would amount to deducting dumping margins from initial U.S. prices in calculating dumping margins.

Another provision of the statute that provides some context is section 779, which provides that, ''[f]or purposes of any law relating to the drawback of customs duties, [CVDs and AD duties] imposed by this subtitle shall not be treated as being regular customs duties.'' [18] While this is restricted in application to duty drawback, it certainly suggests that AD duties and CVDs are distinguishable from regular Customs duties.[19]

The Meaning of ''Any Costs, Charges or Expenses'' of Importation. A number of commenters argue that CVDs to offset domestic subsidies must be deducted as included in the term ''any costs, charges, or expenses'' of bringing the merchandise into the United States, the better argument takes account of the fact that the statute refers to any additional ''costs, charges, expenses and United States import duties * * *.'' These comments argue that this language indicates that import duties are considered to be independent of other costs, charges, and expenses. We disagree. While CVDs are a special type of import duty, they are nevertheless a species of import duty, and are thus covered, if at all, by the phrase ''United States import duties.'' Thus, the Department has interpreted the statute as providing for the addition to initial U.S. prices of any additional costs, charges, or expenses and normal United States import duties (but not other import duties).

The Logic and Context of the 1979 Amendments. With respect to CVDs to offset export subsidies, the 1979 amendments to the statute provide a straightforward response to the argument that they should be deducted from initial U.S. prices in calculating dumping margins—-they require that CVDs to offset export subsidies be added to initial U.S. prices. We do not interpret the statute to require CVDs to offset export subsidies first to be added to initial U.S. prices and then to permit this addition to be negated by their subsequent subtraction.

Domestic subsidies present a closer question, as the statute does not speak directly to them. The fact that the statute addresses CVDs to offset export subsidies directly, however, and then remains silent about the plainly related issue of CVDs to offset domestic subsidies, is not complete silence—-it implies that no adjustment is appropriate. There is no reason why Congress would have provided for the addition of export subsidy CVDs, but not considered the plainly related issue of domestic subsidy CVDs.

Certain domestic parties have argued that the provision for the addition to U.S. prices of CVDs to offset export subsidies, coupled with silence concerning the treatment of CVDs to offset domestic subsidies, indicates that CVDs to offset domestic subsidies should be subtracted from U.S. prices. This logic is flawed. The statute does not require the ''non-deduction'' from initial U.S. prices of CVDs to offset export subsidies—-it requires their addition. There are not one, but two, alternatives to ''non-addition''—-subtraction and no adjustment. As discussed below with respect to the double counting issue, the logical complement to adding CVDs to offset export subsidies to U.S. price is to make no adjustment with respect to CVDs to offset domestic subsidies.[20]

Some domestic commenters argue that the 1979 amendments indicate that CVDs generally must be deducted from initial prices in the United States. These commenters focus on the fact that, in addition to requiring the addition of export subsidy CVDs to the initial U.S. price under (current) (c)(1)(C), the 1979 Act also amended section (c)(2)(A), specifically excluding export subsidies from the normal deductions from initial U.S. prices.[21] The argument is that this additional change would have been pointless, unless CVDs otherwise were to be deducted from U.S. prices.

(d) * * * The purchase price and the exporter's sales price shall be adjusted by being

(1) increased by—

* * * * *

(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States * * *

Pub. L. 96–39, 93 Stat. 181–82 (1979).

This argument is overstated. First, the second of these two amendments to the statute simply states that expenses are to be deducted from the price in the United States ''except as provided in [the paragraph providing for the addition of export subsidies].'' While this could be interpreted to mean that CVDs normally are deducted, it also could be interpreted as a simple safeguard to prevent any possible implication that the same expense should be both added to and subtracted

[16] The 1921 Act, 42 Stat. 15. *See*, S. Rep. No. 67–16, at 4 (1921).

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

[18] 19 U.S.C. 1677h.

[19] Of course, it can also be argued that no exemption would be necessary if the general rule were not that AD duties and CVDs are generally to be treated as regular Customs duties.

[20] As explained above, the addition of export subsidy CVDs and no adjustment for domestic subsidy CVDs is consistent with a presumption that subsidies are passed through into initial prices, but that CVDs are not. There is no consistent set of presumptions about these matters that can be reconciled with the addition to initial U.S. prices of export subsidy CVDs and the subtraction of domestic subsidy CVDs.

[21] The 1979 amendments changed the statute to read as follows:

from prices in the United States. The House Report is silent on the issue,[22] but the Senate Report supports this second interpretation:

* * * the addition for countervailing duties assessed on the same merchandise to offset subsidies is clarified to apply only to subsidies which are classified as export subsidies.

* * * * *

The purpose of the amendment regarding additions to purchase price and exporter's sales price with respect to countervailing duties also being assessed because of an export subsidy is designed to clarify that such adjustment is made only to the extent that the exported merchandise * * * benefits from a particular subsidy. The principal [sic] behind adjustments to the price paid in these instances is to achieve comparability between the price[s] which are being compared. *Where the situation is the same * * * [where the subsidy benefits all merchandise sold in both markets] then no adjustment is appropriate.*[23]

Thus, not only does the Senate Report not support the interpretation that CVDs should be deducted from U.S. price, it states that ''no adjustment'' is appropriate with respect to domestic subsidy CVDs.[24]

Double Counting. The 1979 amendments also demonstrate Congress' intention to avoid double-counting of CVDs and AD duties. Section 772(c)(1)(c) of the Act expressly provides that where an export subsidy has been provided, the Department must increase the U.S. price by ''the amount of any countervailing duty imposed on the subject merchandise * * * to offset an export subsidy.'' 19 U.S.C. section 1677a(c)(1)(C). As the Department has explained, the reason for this is to prevent double-counting:

Domestic subsidies presumably lower the price of the subject merchandise both in the home and the U.S. markets, and therefore have no effect on the measurement of any dumping that might also occur. Export subsidies, by contrast, benefit only exported merchandise. Accordingly, an export subsidy brings about a lower U.S. price, which could be ascribed to either dumping or export subsidization, as well as the potential for double remedies. Imposing both an export-subsidy CVD and an AD duty, calculated with no adjustment for that CVD, would impose a double remedy specifically prohibited by Article VI.5 of the GATT. Thus, the only reasonable explanation for Congress' decision to provide for the {addition to} U.S. price of export-subsidy CVDs is protection against double remedies. *Cold-Rolled Corrosion Resistant Carbon Steel Flat Products from Korea,* 62 FR at 18,422

The treatment of CVDs that arise out domestic subsidies contrasts with the statutory treatment of CVDs that relate to export subsidies. The reason for the difference in treatment is that export subsidies are assumed to increase dumping margins by lowering the export price, but not the domestic price in the exporting country. Consequently, collecting both a CVD on an export subsidy and also the increase in the dumping margin resulting from that subsidy would constitute a double remedy for the export subsidy. Adding the CVD to the initial U.S. price lowers the margin by the amount the subsidy is presumed to have increased it, thereby preventing a double-remedy. On the other hand, domestic subsidies are assumed not to affect dumping margins, because they lower prices in both the U.S. market and the domestic market of the exporting country equally. As a result, there is no need for an adjustment to prevent a double remedy. Thus, in the most general terms, the statute stands for the proposition that dumping margins should not be calculated so as to double-collect CVDs.

The Courts have specifically upheld this rationale for not deducting CVDs from U.S. prices in calculating dumping margins. As the court explained in *U.S. Steel Group* v. *United States:*

Logically, the deduction of countervailing duty, whether export or non-export, from the U.S. price used to calculate the antidumping margin, would result in a double remedy for the domestic industry. Commerce has already corrected for subsidies on the subject merchandise in the countervailing duty order, thereby granting the domestic industry a remedy. To deduct such countervailing duties from U.S. price would create a greater dumping margin, in effect a second remedy for the domestic industry. *U.S. Steel Group* v. *United States,* 15 F.Supp. 892, 900 (Ct. Int'l Trade 1998).

Certain commenters have argued that an analysis of the statute must take into account section 772(c)(2)(B), which provides that any export tax specifically imposed to offset a countervailable subsidy may not be deducted from the initial U.S. price.[25] A number of commenters have pointed out that, because export taxes on subsidies are exempt from the normal requirement to deduct the costs of selling in the United States from initial U.S. prices, it would be consistent to give the same exemption to import taxes (CVDs) on those same subsidies. We agree that not deducting CVDs from U.S. prices is consistent with section 772(c)(2)(B). Section 771(6)(C) lists ''export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.''

The Department's Practice & Relevant Court Decisions. In the 23 years that the Department has administered the AD law, it has never deducted AD duties or CVDs from initial U.S. prices in calculating dumping margins.[26] Nor, apparently, did Treasury ever make such a deduction in the 58 years that it administered the law (from 1921—1979). As the Department has explained:

It is the Department's longstanding position that AD and CVD duties are not a cost within the meaning of section 772(d). AD and CVD duties are unique. Unlike normal duties which are an assessment against value, AD and CVD duties derive from the margin of dumping or rate of subsidization found. See *Federal Mogul,* supra 813 F.Supp. at 872 (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties''). *Final Results of Antidumping Administrative Review: Plate from Germany,* 62 FR 18,390, 18,395 (Apr. 15, 1997).

The Department's interpretation of the statute has been consistently affirmed by the U.S. courts. The CIT has upheld the Department's interpretation of the meaning of section 772(c)(2)(A) of the Act on five occasions, and the court has directly addressed the issue of whether CVDs should be deducted from initial

[22] See discussion of United States Price at H. R. Rep. No. 96–317, at 77 (1979).

[23] S. Rep. No. 96–249 at 93 (1979). (Emphasis added).

[24] The 1979 Act Statement of Administrative Action, at 412, states that:

A new adjustment to ''purchase price'' and ''exporter's sales price'' is intended to reflect provisions of Article VI of the General Agreement on Tariffs and Trade, by mandating the addition to ''purchase price'' or ''exporter's sales price'' of any countervailing duty actually imposed to offset an export subsidy paid on the same merchandise. * * * The GATT prohibits the assessment of both antidumping and countervailing duties to compensate for the same cause of unfairly low priced imports, whether by dumping or as result of an export subsidy.

[25] 19 U.S.C. 1677a(c)(2)(B) directs the Department to reduce the export price or constructed export price by:

the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 1677(6) (C). [Section 771(6) (C) of the Act].

[26] *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 61 FR 18,547 18,564 (Apr. 26, 1996); *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review,* 61 FR 48, 465, 48,469 (Sept. 13, 1996); *Certain Cut-To-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review,* 62 FR 18,390, 18,395 (Apr. 15, 1997); *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 64 FR 12,967, 12,973 (March 16, 1999); and *Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 66 FR 53,388 (Oct. 22, 2001) and accompanying Decision Memorandum at Comment 1. *See Also, Antidumping Duties; Countervailing Duties: Proposed Rule,* 61 FR 7,308, 7,332 (Feb. 27, 1996).

prices in the United States in two decisions.[27] In each case, the Court affirmed the Department's determination not to make the deduction, following the rationale of the earlier decisions upholding the Department's determination not to deduct AD duties from initial U.S. prices.[28]

Throughout this time, Congress has been aware of the Department's firmly-established practice and of the court decisions affirming that practice, and never sought to change the statute in this regard.[29] This creates a strong presumption that the Department's interpretation of the statute is consistent with Congressional intent.[30]

Certain commenters have pointed to two Commerce administrative determinations, in *Fuel Ethanol from Brazil* and *Softwood Lumber from Canada,* in support of their contention that the Department has previously determined to deduct duties from U.S. price. However, the Department's determinations in these two cases are inapposite. First, the Department's 1986 determination in *Fuel Ethanol from Brazil* is not relevant to the issue of the treatment of CVDs. In that determination, the Department deducted special tariffs on imported fuel ethanol from the initial U.S. prices.[31] The tariffs in question were not CVDs. In fact, they were not remedial duties under any trade remedy law. Rather, they were tariffs added to the HTS by Congress to offset a tax subsidy that producers received for fuel-grade ethanol. A contemporary investigation by the International Trade Commission did not find injury to a U.S. industry.[32] Consequently, *Fuel Ethanol from Brazil* is not relevant to the issue of whether CVDs should be subtracted from U.S. prices in calculating dumping margins.

Similarly, the Department's 2002 determination in *Softwood Lumber from Canada* is not relevant to the issue of the treatment of CVDs.[33] That proceeding involved imports of lumber that had been subject to a quota-based fee under the U.S.—Canada Softwood Lumber Agreement. The export fees applied only to exports of lumber from Canada above 14.7 billion board feet. The Department deducted these fees from initial U.S. prices, noting that they did not qualify for the exemption from such deductions for export payments ''specifically intended to offset countervailable subsidies.'' [34] Because that determination involved export fees rather than import duties, and similarly did not address the purpose of CVDs or account for the legislative history discussed above, it does not apply to the issue of whether CVDs should be deducted.

Customs' Practice. Certain commenters argue that CVDs must be deducted from initial U.S. prices because Customs deducts them from the price at which such merchandise is exported in calculating export value under section 302 of the Emergency Tariff Act, which contains identical language to section 772 of the AD law. The argument is that Customs must deduct CVDs in calculating entered value in order to avoid assessing Customs duties on CVDs, which would arguably be double counting. Accordingly, the identical language in the AD law must also be interpreted to require the deduction of CVDs from initial U.S. prices in calculating EP or CEP.

Any differences between the Department's and Customs' approach to valuation are not germane to the Department's interpretation of the statute. Customs law and the AD/CVD laws are distinctly different statutes and are applied for distinctly different purposes. The Courts have often countenanced different approaches and interpretations by the two agencies in interpreting the respective laws which they administer.[35] Thus, the answer is that even identical language in two statutes must be interpreted in context, and that export value was never intended to be exactly the same thing as EP or CEP.

Fair Pricing. Some domestic parties argue that, if CVDs are not passed through into initial U.S. prices, the foreign producers defeat the purpose of the AD law to ''level the playing field'' in the U.S. market. Thus, they argue, CVDs must be deducted from the initial U.S. price. to create a fair comparison. This argument takes what may well have been an implicit assumption of Congress in creating the AD and CVD laws (although apparently not the 1979 amendments)—that AD duties and CVDs would raise prices in the U.S. market—and turns it into a requirement to be enforced by the AD law. The AD law itself, however, contains no such requirement. It simply directs the Department to determine the export price and the normal value and to assess AD duties in the amount of the difference. In other words, the AD law does not require that merchandise subject to AD duties or CVDs be sold at higher prices in the U.S. market if the producer pays the duties.

The only provision of the statute that even refers to the potential effect of duties on prices in the U.S. market is in the statute's sunset provision, introduced in the Uruguay Round Agreements Act. This directs the Department to determine in CEP situations (in the second and fourth administrative reviews only) whether the foreign producer or exporter ''absorbed'' the AD duties.[36] There is no comparable provision with respect to CVDs. A finding that absorption occurred does not affect the AD margin, but only the determination of whether dumping would be likely to continue or

[27] *See, PQ Corp.* v. *United States,* 652 F. Supp. 724, 737 (Ct. Int'l Trade 1987) (Commerce need not deduct estimated AD deposits from the initial price in the United States); *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (Ct. Int'l Trade 1993) (Commerce need not deduct estimated AD deposits from the initial price in the United States); *AK Steel Corp.* v. *United States,* 988 F. Supp. 594 (Ct. Int'l Trade 1997) (actual antidumping and countervailing duties need not be deducted from the initial price in the United States); *Hoogovens Staal* v. *United States,* 4 F. Supp.2d 1213, 1220 (Ct. Int'l Trade 1998) (Commerce need not deduct AD duties from the initial price in the United States as either U.S. import duties or as costs); *Bethlehem Steel* v. *United States,* 27 F. Supp.2d 201, 208 (Ct. Int'l Trade 1998) (Commerce need not deduct AD duties from the initial price in the United States as either U.S. import duties or as costs); *U.S. Steel Group* v. *United States,* 15 F. Supp. 2d 892, 898–900 (Ct. Int'l Trade 1998) (Commerce need not deduct either AD nor CVDs from the starting price in the United States in calculating AD duties). *But see, C.J. Tower & Sons* v. *United States,* 71 F. 2d 438 (CCPA 1934), in which the Court of Customs and Patent Appeals stated in another context that special dumping duties were not penalties, but duties for ''all purposes.''

[28] *U.S. Steel,* at 899 (Ct. Int'l Trade 1998); AK Steel, at 607–608.

[29] *See,* H.R. Rep. No. 103–826(I), at 60–61 (1994); S. Rep. No. 96–249, at 94 (1979).

[30] *See, FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132 (2000); *United States* v. *Hermanos,* 209 U.S. 337, 339 (1908); *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran,* 456 U.S. 353, 381–82 (1982).

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

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

[33] *Certain Softwood Lumber Products from Canada; Notice of Final Determination of Sales at Less Than Fair Value,* 67 FR 15,539 (Apr. 2, 2002), and accompanying decision memorandum, at Comment Nine.

[34] *Id.*

[35] *See, Diversified Prod.* v. *United States,* 572 F. Supp. 883 (Ct. Int'l Trade 1983); *Torrington* v. *United States,* 745 F. Supp. 718, 722 (Ct. Int'l Trade 1990), *aff'd,* 938 F.2d 1276 (Fed. Cir. 1991) (Commerce not bound by customs classifications); *Koyo Seiko* v. *United States,* 955 F. Supp. 1532 (Ct. Int'l Trade 1997) (Customs has a ministerial role in antidumping duty law and * * *. it is solely Commerce's domain to define the class or kind of merchandise.) *Roquette Freres* v. *United States,* 583 F. Supp. 599, 605 (Ct. Int'l Trade 1984) (Commerce not bound by Customs interpretation of term ''class or kind'').

[36] Section 751(a)(4) of the Act, 19 U.S.C. 1675(a)(4).

recur if the order were revoked.[37] The SAA relating to this very provision states that it is not intended to provide for the treatment of AD duties as a cost in AD calculations.[38]

A related argument is that producers must be forced to cover their full costs of production in the United States, and that the extent to which that cost of production has been lowered by subsidies must be accounted for by deducting CVDs on those subsidies from initial U.S. prices. This argument is mistaken—the AD law does not direct the Department to add foreign government subsidies to foreign producers' costs of production. Presumably, Congress did not intend for the Department to effectively accomplish the same thing by subtracting CVDs from initial U.S. prices.

Conclusion. The Department will continue not to deduct CVDs from U.S. prices in calculating dumping margins because CVDs are not ''United States import duties'' within the meaning of the statute, and to make such a deduction effectively would collect the CVDs a second time. Accordingly, to the extent that CVDs may reduce dumping margins, this is not a distortion of any margin to be eliminated, but a legitimate reduction in the level of dumping.

Appendix II—Issues in Decision Memorandum

Comment 1: Application of the Major Inputs Rule to Eurodif's Purchases of Electricity
Comment 2: General and Administrative (G&A) expenses
Comment 3: Financial Expenses
Comment 4: Constructed Value (CV) Profit
Comment 5: Goodwill Expenses
Comment 6: Tails Defluorination and Plant Decommissioning
Comment 7: Attribution of Subject Merchandise
Comment 8: Circumstance of Sale (COS) Adjustment
Comment 9: Constructed Export Price (CEP) Offset
Comment 10: Indirect Selling Expenses
Comment 11: CV Selling Expenses
Comment 12: Treatment of Countervailing Duties

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[37] The Department finds that the duties have been absorbed if the seller pays them, which is consistent with the approach to CVDs taken the 1979 amendments to the AD law. *See, e.g., Stainless Steel Wire Rod from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 57,879, 57,880 (Oct. 7, 2003); *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review,* 68 FR 19,504, 19,505 (Apr. 21, 2003).

[38] Uruguay Round Agreements Act, Statement of Administrative Action at 885.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–501)

Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China: Preliminary Determination To Rescind the Antidumping New Shipper Review of Shanghai R&R Import/ Export Co., Ltd.

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

SUMMARY: On September 30, 2003 the Department of Commerce (the Department) initiated new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC) covering the period February 1, 2003, through July 31, 2003. *See Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 68 FR 57875 (October 7, 2004) (*Initiation Notice*). These new shipper reviews covered two exporters: Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai R&R) and Changshan Import/Export Co., Ltd (Changshan). For the reasons discussed below, we preliminarily intend to rescind the new shipper review of Shanghai R&R. The Department is addressing the preliminary determination for Changshan in a separate notice.

EFFECTIVE DATE: August 3, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Dana Mermelstein at (202) 482–0780 and (202) 482–1391, respectively; Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1986, the Department issued an antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. *See Amended Antidumping Duty Order: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 8342 (February 14, 1986). On August 14, 2003, the Department received from Shanghai R&R, an exporter of subject merchandise to the United States, a timely request for a new shipper review under this order. Pursuant to section 351.214(b)(2)(iv) of the Department's regulations, this request included documentation establishing the volume of Shanghai R&R's first shipment to the United States and the date of the first sale to an unaffiliated customer in the United States. On September 30, 2003, the Department initiated this new shipper review covering the period February 1, 2003, through July 31, 2003. *See Initiation Notice*. On January 8, 2004, we received Shanghai R&R's response to the Department's initial questionnaire. On April 29, 2004, the Department received Shanghai R&R's response to the Department's supplemental questionnaire. On June 10, 2004, we received Shanghai R&R's response to the Department's second supplemental questionnaire.

On March 18, 2004, the Department extended the time limit for the completion of the preliminary results to July 26, 2004, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and section 351.214(i)(2) of the Department's regulations. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews: Natural Bristle Paintbrushes from the People's Republic of China*, 69 FR 12831 (March 18, 2004).

Verification

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of Shanghai R&R. We used standard verification procedures, including on–site inspection of the production and sales facilities, and an examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Natural Bristle Paintbrushes from the People's Republic of China: Sales Verification Report for Shanghai R&R Import/Export Co., Ltd.*, dated July 21, 2004. A public version of this report is on file in the Central Records Unit located in room B–099 of the Main Commerce Building.

Intent to Rescind Review

With every new shipper review request, the Department has an obligation to analyze the documentation and certifications to establish that they meet the conditions of section 351.214(b)(2)(iv) of the Department's regulations. At the time Shanghai R&R requested this new shipper review, we determined that the regulatory requirements were met and we initiated the new shipper review. At verification, the Department found documentation which brings into question that this sale was in fact made to the importer identified in Shanghai R&R's initial request for review and in all subsequent questionnaire responses. Shanghai R&R's explanation, that mistakes were made in identifying the importer in