subsequently asserted that none of the alleged errors cited by POSCO constituted ministerial errors.

Section 353.28(d) of the Department's regulations defines a ''ministerial error'' as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' 19 CFR § 353.28(d). The first error that POSCO alleged was the Department's failure to reflect in its margin calculations the methodology explicitly stated in the final results with regard to the deduction from U.S. price of one-half of the POSTRADE markup. *See* the May 2, 1997, memorandum from Steve Bezirganian for John Kugelman. We agree with POSCO that this constituted a ministerial error as defined by 19 CFR § 353.28(d), and have corrected the error in question.

The Department has determined that the other five ministerial errors alleged by POSCO are not ministerial errors. *See* the May 2, 1997, memorandum from Steve Bezirganian for John Kugelman. Therefore, we did not amend the final results on those five points.

Amended Final Results of Review

As a result of the correction, we have determined that the following *de minimis* percentage weighted-average margins exist for the period August 1, 1994 through July 31, 1995:

Manufacturer/producer/exporter	Weighted-average margin (percent)
Certain Cold-Rolled Carbon Steel Flat Products	
POSCO	0.49
Certain Corrosion-Resistant Carbon Steel Flat Products	
POSCO	0.09

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice for all shipments of the subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (''the Act''): (1) The cash deposit rates for POSCO and the collapsed companies (POCOS and PSI) shall be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate shall continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original investigations, but the manufacturer is, the cash deposit rate shall be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates in the LTFV investigations.

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

This notice also serves as final reminder to importers of their responsibility 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 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 § 353.34(d). Failure to comply is a violation of the APO.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and 19 CFR § 353.28(c).

Dated: June 13, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–16244 Filed 6–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

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

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

SUMMARY: On December 10, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia (61 FR 65019). This review covers Heveafil Sdn. Bhd. (''Heveafil''), Rubberflex Sdn. Bhd. (''Rubberflex''), Filati Lastex Elastofibre (Malaysia) (''Filati''), Rubfil Sdn. Bhd. (''Rubfil'') (collectively ''respondents''), manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is October 1, 1994 through September 30, 1995. We gave interested parties an opportunity to comment on our preliminary results. Petitioner and respondents submitted case briefs on March 10, 1997 and rebuttal briefs on March 17, 1997. Respondents requested a hearing on January 2, 1997, but later withdrew their request for a hearing. Therefore, we have based our analysis on the comments received, and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or James Terpstra, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4740 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On October 7, 1992, the Department published in the **Federal Register** (57 FR 46150) the antidumping duty order on extruded rubber thread from Malaysia. On October 30, 1995, the petitioner, North American Rubber Thread, requested that the Department conduct an antidumping administrative review for the following producers and exporters of extruded rubber thread: Heveafil Sdn. Bhd (''Heveafil''), Rubberflex Sdn. Bhd. (''Rubberflex''), Filati Lastex Elastofibre (Malaysia) (''Filati''), and Rubfil Sdn. Bhd (''Rubfil''). On October 31, 1995, these same producers and exporters requested to be reviewed. On November 16, 1995, we published a notice of initiation of an administrative review of this order for the period October 1, 1994, through September 30, 1995 (60 FR 57573), for the following producers and exporters of extruded rubber thread: Heveafil, Rubberflex, Filati, and Rubfil. We conducted a vertification of Rubberflex in Malaysia from September 23, 1996 until October 5, 1996, and of its U.S. affiliate in Hickory, North Carolina from October 16 to 18, 1996. Our preliminary results of review were published in the **Federal Register** on December 10, 1996 (61 FR 65019). Petitioner and all respondents filed case briefs on March 10, 1997 and rebuttal briefs on March 17, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

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

Analysis of Comments Received

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

Facts Available for Rubberflex

We found that responses provided by Rubberflex could not be verified within the meaning of section 776(a)(2)(D) of the Act, and that the complete verification failure renders the response unusable under section 782(e) of the Act. For a significant portion of the cost and expense items reviewed at verification, the information provided in the questionnaire response was inaccurate or could not be verified. This includes, but is not limited to, indirect selling expenses, overhead, selling, general and administrative (SG&A) expenses, labor, materials, rebates, corporate structure, and the completeness of U.S. sales reporting. For numerous items, Rubberflex attempted to present revised information at verification. However, Rubberflex failed to disclose the numerous errors in its response prior to, or at the start of verification, as repeatedly requested by the Department. Rather, Rubberflex attempted to present its new information in a piecemeal manner, often late in the verification. This effectively precluded the Department from having adequate time to evaluate the scope and magnitude of the changes. Accordingly, we determined that Rubberflex failed to demonstrate the completeness and accuracy of its questionnaire response at verification and thus has failed verification.

As discussed in comments 1 through 26 below, we carefully reviewed Rubberflex's arguments in light of the verification report and the supporting verification exhibits. This analysis reveals that Rubberflex's brief systematically mischaracterizes, and seeks to minimize the importance of, all of the myriad problems encountered at verification. As described below, as in the preliminary results of review, we find that, pursuant to sections 776(a) and 782(e) of the Act, the errors and problems found at verification render Rubberflex's questionnaire response unusable for purposes of calculating a margin.

Where a party provides information requested by the Department but the information cannot be verified as required by section 782(i) of the Act, section 776(a)(2)(D) of the Act requires the Department to use facts otherwise available in reaching the applicable determination. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

In this case we have determined that the information submitted could not be verified and that Rubberflex did not act to the best of its ability. Moreover, using Rubberflex's information would create undue difficulty. Verification revealed numerous errors in Rubberflex's information. Using this information would require the Department to use information it knows is incorrect, unverified or both. At verification, we determined that a substantial portion of the information submitted by Rubberflex was incorrect and we were not always able to determine the correct information for every error found at verification. Thus, any attempt to use Rubberflex's data, in whole or in part, would be unduly difficult. Accordingly, we must decline to consider information submitted by Rubberflex.

Moreover, we determine that, pursuant to section 776(b) of the Act, Rubberflex did not cooperate to the best of its ability to comply with our requests for information and therefore we are using adverse facts available to determine Rubberflex's margin. Such adverse inferences may include information derived from: (1) the petition, (2) a final determination in the investigation, (3) any previous review under section 751 of the Act of determination under section 753 of the Act, or (4) any other information placed on the record.

In selecting a margin would be sufficiently adverse, we considered Rubberflex's degree of cooperation and the nature of the deficiencies detected at verification. Further, we note that Rubberflex's normal audit cycle coincided with verification in such a way as to hamper Rubberflex's preparation for the verification of certain items. In selecting a facts available margin which is appropriate in light of these circumstances, we determine that (as we did in our preliminary results) that 20.38 percent, which is Rubberflex's highest rate from a prior segment of this proceeding, is sufficiently adverse to encourage full cooperation in future segments of the proceeding. Moreover, this rate has

probative value because it is Rubberflex's calculated rate from the less than fair investigation. Furthermore, there is no evidence on the record indicating that this selected margin in not appropriate as adverse facts available (*see, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 62 FR 2081, 2088 (January 15, 1997)).

Section 776(c) of the Act requires the Department to corroborate secondary information used as facts available to the extent practicable. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. The Statement of Administrative Action, H.R. Doc. 316, Vol 1, 103d Cong., 2d Sess. 870 (1994), (''SAA'') provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other type of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination . After reviewing the record, we are satisfied that this rate has probative value because it is Rubberflex's calculated rate from the less than fair value proceeding. Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this review. See SAA at 869. Further, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (*See,* e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996).

Comments Concerning Rubberflex

Rubberflex argues that the Department was not justified in disregarding its responses and assigning facts available in the preliminary results. Rubberflex contends that the Department verified Rubberflex's questionnaire responses, and that, at most, the Department should use partial facts available for certain aspects of its dumping calculations. Rubberflex made numerous detailed arguments refuting and rebutting the Department's preliminary results, verification report, and verification failure memo. We have addressed these to the greatest extent practicable in this notice. However, many of the comments are extremely detailed and many can only be completely addressed by reference to proprietary data. Accordingly, we addressed each comment in complete detail in a proprietary analysis memorandum to the file dated June 9, 1997.

Comment 1: Reconciliation of Sales, Profit and Expenses.

Rubberflex maintains that it provided the Department with a reconciliation of its calendar year 1994 and 1995 trial balances to the appropriate audited, consolidated financial statements at verification. Rubberflex states that, contrary to the verification report, total sales, profit, financing expenses, and indirect selling expenses were reconciled to the audited financial statements.

DOC Position: We agree that Rubberflex was able to reconcile its audited financial statements to its trial balance for the above-mentioned figures. We disagree that this had any bearing on the verification of specific items. This reconciliation was not what was requested of them at verification. Rubberflex voluntarily provided all of this information in response to the Department's request that it demonstrate that the indirect selling expenses reported in the revised response provided at verification tied to the audited financial statements. Rubberflex did not demonstrate that the figures reported in its revised response for indirect selling expenses and G&A tied to its audited financial statements.

Comment 2: Reconciliation of Rubberflex's Affiliates' Financial Statements.

Rubberflex disputes the Department's determination that its home market indirect selling expenses did not reconcile to its current financial statement due to the fact that indirect selling expenses incurred in Rubberlex's U.K. and German branch offices (expenses which account for differences between the home market indirect selling expenses and the financial statement) could not be verified. Rubberflex contends that during verification it demonstrated how total sales, expenses, and profits of the U.K. and German branches accounted for differences between consolidation totals and totals for Rubberflex in Malaysia. Further, Rubberflex claims that it should not be held accountable for providing original copies of the auditors' consolidation worksheets in the short time permitted at verification. Rubberflex also contends that it stressed during verification that information involving its U.K. and German branches could only be accurately verified on site in those particular countries.

DOC Position: We disagree. It is one of the primary requirements of verification that a company is required to tie the information in its questionnaire response to its audited consolidated financial statements. Rubberflex failed to do so at verification. Rubberflex is essentially arguing that we should accept their attempt, but ultimate failure. We disagree. Given the circumstances of this review, where Rubberflex provided numerous, inadequately explained or documented, revisions to its questionnaire response, Rubberflex's failure in this regard undermines the entire verification.

Comment 3: Home Market Sales List.

Rubberflex states that verification demonstrated that all home market sales were correctly reported and traced through the accounting records. In addition, Rubberflex maintains that the Department found that Rubberflex's date-of-sale methodology accurately reflected the date that all material terms of the sale were established and that all credit memos for returned and defective merchandise were accurately reported.

DOC Position: We agree with Rubberflex in general that the home market sales list verified. The verification report identifies the minor discrepancies noted.

Comment 4: Home Market Movement Expenses.

Rubberflex states that the verification report indicates that home market movement expenses were traced to the general ledger and that all freight expenses were properly accounted for. Further, Rubberflex argues that the Department confused the facts in this review with verification difficulties regarding home market movement expenses in the 1993/1994 administrative review and that this confusion resulted in the Department's erroneous decision to use adverse facts available on issues relating to another review.

DOC Position: We agree with Rubberflex's characterization of the verification of home market movement expenses. We disagree that any of the information presented in the 1993–1994 review influenced the use of adverse facts available in the instant review.

Comment 5: Home Market Credit Expenses.

Rubberflex states that its original response contained the information needed to calculate home market credit expenses and that this response was neither revised nor found to contain any significant errors during verification. Rubberflex states that the one clerical error found by the Department at verification resulted in an increase to the short-term interest rate.

DOC Position: We agree with Rubberflex that we found only small clerical error at verification which resulted in an increase to the short-term interest rate. However, we disagree that this was the only error found at verification. We also found that Rubberflex failed to include certain expenses related to export credit refinancing (ECR) expenses in its calculation of the interest rate used to impute credit expenses on home market sales.

Comment 6: Home Market Packing Expenses.

Rubberflex claims that at the beginning of verification, it disclosed to the Department that it had erroneously allocated the cost of all factory workers' benefits in the category of fixed overhead costs, rather than allocating that cost among direct labor costs, fixed overhead costs, and packing labor costs. Rubberflex stated that a corrected worksheet reflecting this reallocation was submitted to the department at the beginning of the cost verification, and subsequently verified. Rubberflex contends that a comparison of the original to the corrected worksheets reveals only minor changes in the calculation of packing labor costs. Further, Rubberflex also contends that it submitted an additional worksheet which proved that the reallocation did not affect the total cost of production (COP) or constructed value (CV).

DOC Position: We agree with Rubberflex that we found only minor discrepancies in Rubberflex's calculation of packing material and labor. However, we disagree that Rubberflex presented any documentation at the beginning of verification to demonstrate what changes it made to the classification of labor expenses in its sale and cost response. Rubberflex did make a general oral statement that it had reallocated some labor costs across packing, indirect overhead and factory labor, but it did not spell out those changes. The Department then directly and repeatedly requested Rubberflex to provide this information in writing, which it said it would do. However, Rubberflex failed to report any of its changed allocations until each subject arose in the course of the verification.

Comment 7: Home Market Indirect Selling Expenses.

Rubberflex states that the worksheets provided in its questionnaire response regarding home market indirect selling expenses and general and administrative expenses (G&A) were based on its auditor's presentation of G&A expenses, which in turn were based on Rubberflex's trial balance and general ledger. Rubberflex contends that the titles of the concepts listed in the auditor's presentation did not always relate directly to the titles of the accounts used by Rubberflex in the ordinary course of business because the auditor collapsed several accounts into a single concept. Rubberflex further contends that while preparing for verification, it discovered that the worksheets in its response required two corrections. However, Rubberflex maintains that: (1) it disclosed these changes on the first day of verification, (2) the Department reviewed these revisions, and (3) these revisions were tied to the financial statements.

DOC Position: As we explained in the *Facts Available for Rubberflex* section of this notice and the Department's position to Comments 1 and 2, Rubberflex failed to demonstrate that it reported all of the appropriate indirect selling expenses and G&A expenses to the Department, despite three separate submissions, and that it failed to tie the reported expenses to its audited financial statements. It failed to provide a worksheet, or any other type of document, reconciling the ''titles and concepts'' used in its trial balance to those on the audited financial statements. (*See* page 2 of the Department's December 12, 1996 memorandum concerning the verification failure for Rubberflex.) Therefore, Rubberflex failed to demonstrate that it included all appropriate indirect selling expenses and G&A expenses in its revised exhibit, and that those expenses tied to the total amount of expenses recorded for Rubberflex Malaysia on Rubberflex's financial statements.

Comment 8: U.S. Sales Listing.

Rubberflex contends that it demonstrated at the verification in Malaysia that (1) all export price (EP) sales entered into the United States during the review period were reported; (2) it accurately reported the date of sale for EP sales as the Malaysian bill of lading date; and (3) it accurately reported foreign inland freight, packing, indirect selling expenses, brokerage and handling, international freight and marine insurance pertaining to U.S. sales that were incurred in Malaysia.

DOC Position: We disagree with Rubberflex's characterization of the portion of the U.S. sales verification which took place in Malaysia. At the Malaysian portion of verification, Rubberflex showed that it reported all entries into the United States during the period of review and that it used the Malaysian bill of lading date as the date of sale for EP sales, including certain ''consignment'' sales. However, our review of Rubberflex's U.S. sales reporting during the U.S. portion of the verification revealed a great deal of confusion concerning the date of sale and the accuracy of the computer sales listing. Rubberflex was unable to demonstrate that the price, quantity and date of sale were accurately reported on the computer sales listing. In Malaysia, and in the questionnaire response, the date of sale for all EP sales was identified as the Malaysian bill of lading date. However, in the United States, company officials stated that for certain consignment sales, Rubberflex used the date on which the rubber thread is withdrawn from Rubberflex's customer's inventory as the date of sale. Thus, the questionnaire response, and the Malaysian verification findings, were contradicted. Moreover, because Rubberflex failed to indicate on its computer tape which sales were consignment sales, it was not possible to know what date of sale was operative for any of the sales listed on the computer tape.

With respect to the accuracy of the other expenses: (1) the problems with foreign inland freight and indirect selling expenses are discussed elsewhere, and (2) we found only minor discrepancies with ocean freight, marine insurance or brokerage and handling.

Comment 9: The Total Volume and Value of EP and Constructed Export Price (CEP) Sales.

Rubberflex argues that the Department was able to reconcile the quantity and value of Rubberflex's sales to the response after certain adjustments were made at the U.S. verification. Rubberflex contends that, at the U.S. verification, Rubberflex provided worksheets that traced the reported quantities and values of the U.S. sales to Rubberflex's audited financial statements.

DOC Position: We disagree. The verification report establishes that Rubberflex was never able to conclusively demonstrate that its U.S. sales were correctly reported. Rubberflex was not able to demonstrate the validity of the information provided on the computer tapes by the end of the verification.

As Rubberflex explains in its case brief, it presented a reconciliation of the

volume and value of sales from its financial statements to the response. We found a number of clerical errors and omissions, such as credit memos that were initially omitted from the reconciliation exercise because they were omitted from the response. We found that: (1) certain sales were reported in two review periods; (2) others were misclassified between EP and CEP sales; (3) the date of sale for certain EP sales was misreported; and (4) Rubberflex could not reconcile its credit memos to the specific line items on the computer tape. Given that we found errors in almost every phase of the numerous attempted reconciliations of U.S. sales, it is not accurate to claim, as does Rubberflex, that the quantity of U.S. sales was in any way reconciled completely. Consequently, we found that these errors and omissions undermined the integrity of the response and made the computer tape unusable for the purpose of calculating a margin.

Comment 10: Date of Sale Methodology for U.S. Sales in the 1993–1994 Review.

Rubberflex notes that the Department's December 12, 1996 memorandum stated that ''Rubberflex failed to use the appropriate date of sale methodology for purchase price sales in the 1993–1994 review.'' Rubberflex contends that the date of sale issues relating to the 1993/1994 review were erroneously considered in the Department's determination to use ''adverse facts available'' in the 1994–1995 review.

DOC Position: We note that the December 12, 1996 memorandum applied both to the 1993–1994 and the 1994–1995 reviews. In the example cited by Rubberflex, the Department identified that the date of sale issue applied clearly to the 1993–1994 review, based on the evidence on the record in that segment of the proceeding. Rubberflex is incorrect that such information was considered in our determination to use ''adverse facts available'' in the instant review. The Department's determination in the instant review is based only on information pertaining to the 1994–1995 period of review.

Comment 11: Review Classification According To Date of Entry.

Rubberflex states that its inadvertent error of classifying 37 sales under two different review periods can be easily rectified, and should not form the basis for the assignment of total facts available. Rubberflex disputes the Department's contention that Rubberflex was not able to state with any clarity for which review the 37 sales should have been reported. Rubberflex claims that the Department verified the entry dates for the sales in question and noted no discrepancies. Therefore, Rubberflex requests that the Department revisit this issue and reclassify those 37 sales into the appropriate review period according to date of entry.

DOC Position: At verification, Rubberflex was unable to appropriately classify all of its sales to the United States with regard to review period and type of sale (export price (EP) or constructed export price (CEP)). We asked Rubberflex to properly classify 37, of the approximately 125 EP sales, that we found reported in both reviews. Rubberflex claimed that all consignment sales should be classified in the 1994–1995 review. However, this classification did not coincide with the narrative of its response which indicated that it used the Malaysian bill of lading date as the date of sale. Some of these consignment sales had U.S. entry dates which occurred during the 1993–1994 review. Therefore, since the U.S. entry date always follows the bill of lading date in Malaysia (since the ship arrives in the U.S. after it leaves Malaysia), these sales could not properly be classified in the 1994–1995 review. When the Department tried to examine the rest of the computer sales listing for the treatment of the date of sale in consignment sales, it found that Rubberflex did not indicate which sales were consignment sales on the computer sales listing submitted to the Department. Consequently, the Department cannot determine whether the rest of the sales reported on the computer tape were appropriately classified with respect to review period, and therefore, we have no basis by which to accurately reclassify these 37 sales or to verify the accuracy of respondent's classification of the remaining U.S. sales as reported by respondent.

We note again that it is Rubberflex's responsibility, not the Department's, to prepare the questionnaire response. The errors we found at verification in the preparation of Rubberflex's U.S. sales data were so wide-spread and pervasive that the Department could not ensure that any of the reported information was correct unless we were to undertake the task of reconstructing the questionnaire response ourselves.

Comment 12: CEP and EP Sales.

Rubberflex disputes the Department's determination that it misreported or duplicated the reporting of certain sales (*i.e.*, certain sales classified as both CEP and EP). Rubberflex explains that it clarified during verification the reason why certain invoices were referenced under different review periods and classified under different U.S. databases. As an example, Rubberflex states that sales must be reported under various U.S. classification because certain consignment sales and sales made out of inventory normally result in a number of invoices issued by the U.S. affiliate, whereas the container corresponding to those sales is recorded in Rubberflex's books as a single invoice. Moreover, Rubberflex claims that during verification, the Department examined a few invoices having similar circumstances and indicated its satisfaction with Rubberflex's explanations, and did not request to view additional invoices. Rubberflex contends that it properly reported all U.S. sales.

Petitioner contends Rubberflex misstates the standard for when sales are EP versus CEP. If a subsidiary is fully responsible for setting the terms of the sale (as Rubberflex's U.S. subsidiary is for all U.S. sales), that alone makes the sales CEP sales according to *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9171, 9171–72 (February 28, 1997) (Comments 14 and 16).

DOC Position: We disagree with Rubberflex. the verification report states that company officials were confused about the classification of Rubberflex's U.S. sales with respect to CEP and EP and with respect to review period. At the conclusion of the verification, company officials were still unable to determine which sales should or should not be reported, or whether they were EP or CEP sales.

Comment 13: Credit Memos in the U.S. Market.

Rubberflex contends that the Department overstates the impact of the omitted credit memos during the POR. Rubberflex claims that its U.S. affiliate identified the omitted credit memos, most of which had no effect on unit price, and thus no effect on dumping margins of any U.S. sales. Rubberflex disputes the Department's determination that the omitted credit memos made it impossible to tie the U.S. sales listing to the U.S. affiliate's financial statements.

DOC Position: We disagree. Rubberflex reported the U.S. price and quantity net of credit notes, despite instructions in the questionnaire to record price and quantity adjustments separately. Therefore, it is not possible to determine which sales have price and quantity adjustments attributed to them by examining the computer tape.

At verification, Rubberflex was unable to reconcile the credit memos to the

computer sales listing. First, Rubberflex failed to have its reconciliation (via the mechanism of credit memos) of the EP sales value from the financial statements to the response prepared at the beginning of the verification. Secondly, Rubberflex initially failed to report all of its credit memos with respect to CEP sales on the reconciliation from the financial statements to the computer sales listing. Further examination revealed that Rubberflex had also failed to revise the computer sales listing to account for these missing credit memos. Finally, Rubberflex company officials in the United States stated that they did not know how to tie the credit memos listed in the verification exhibit 52 to the questionnaire responses since Rubberflex company officials in Malaysia prepared that portion of the response.

Comment 14: Corrected Worksheets Should Be Part of the Record.

Rubberflex contends that given the time constraints, it was unable to present corrected worksheets on the first day of verification, and therefore, those worksheets, which Rubberflex contends were subsequently submitted and verified, should not be disregarded. Rubberflex disputes the Department's finding that it had no worksheets to demonstrate how the original responses were prepared or why they were changed or what the relationship was between the original and revised submissions. Rubberflex contends that corrected worksheets were submitted during verification, are referred to in the Department's verification report and are found in the verification exhibits. Rubberflex states that a side-by-side comparison of the original to the revised worksheets clearly reveals the relationship between the documents.

Rubberflex also contends that on the first day of verification, it suggested to the Department that any corrected worksheets be included as part of the verification exhibits normally submitted after verification and that the Department did not object to its proposal. Rubberflex also states that it repeatedly requested to submit revised computer tapes to reflect corrections it claims to have presented during the beginning of verification. However, Rubberflex claims that the Department never responded to its request.

Petitioner emphasized that Rubberflex did not submit to the Department a listing of reporting errors at the commencement of verification, nor was petitioner served such a list, as required by the Department's regulations. Petitioner contends that Rubberflex's claim that the Department was advised at the commencement of verification of certain errors in its submissions should be of no consequence.

DOC Position: As stated in our preliminary results, we found that the responses provided by Rubberflex could not be verified. The inaccuracies which render the response unusable for purposes of margin calculations include the fact that Rubberflex attempted to provide revised questionnaire responses at verification for home market indirect selling expenses, direct labor and packing labor expense, variable overhead and cost of goods sold; for these same expenses Rubberflex could not demonstrate how the original response was supported by documentation, nor could it document the difference between the original and revised submission for these items.

Rubberflex failed to provide written disclosure of changes made to its questionnaire response on the first day of verification, although it was asked to do so. Rather, it provided verification exhibits which constitute revised questionnaire responses throughout the course of the verification. Rubberflex also failed to explain and/or quantify the effects of these revisions, rending the Department unable to assess the significance or impact of these changes. As we stated in *Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 969, 970 (January 7, 1997), the Department can accept new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.

Rubberflex states in its brief that it submitted such revisions at the beginning of the verification. This is directly contradicted by the facts on the record. There were 38 verification exhibits covering the verification in Malaysia. The document concerning packing cost is exhibit number 18, that regarding direct labor is exhibit number 22 and that regarding fixed overhead is exhibit number 33. As such, the record clearly demonstrates that the information was provided piecemeal, and late in the verification exercise.

We also disagree with Rubberflex's contention that the Department engaged in any discussion whatsoever during verification concerning a ''suggestion'' that Rubberflex file any corrected worksheets with the exhibits normally filed after verification. We further disagree that Rubberflex engaged in any discussion what ever concerning the provision of a revised computer tape. Given the pervasive errors and changes made to the questionnaire response and the difficulties verifying those changes, the Department has no reason to believe that a new computer tape, submitted after verification, would accurately represent the changes to the response that were presented during the verification. Under the circumstances of this case, the Department would undermine its purpose in verifying the questionnaire response by accepting such new information after verification.

Comment 15: Corporate Structure.

Rubberflex disputes the Department's finding that Rubberflex failed to identify the owners of its company and the existence of an affiliated European company. Rubberflex claims that it demonstrated the identify of its parent company through its ''annual return'' to the Government of Malaysia which reports information regarding its shareholders and directors. Further, Rubberflex contends that it tied the shareholdings from the ''annual return'' to a corporate structure worksheet provided in its response.

In addition, regarding any European affiliates, Rubberflex contends that it could not provide documentation regarding the sale of these companies, which it explained to the Department at verification. Rubberflex further states that, regardless, the sale of affiliated European resellers have no relevance to Rubberflex's sales verification in the home and U.S. markets.

DOC Position: We disagree with Rubberflex that corporate structure was adequately verified. Rubberflex provided new information at verification by introducing the existence of a previously unreported corporate owner. We asked Rubberflex to provide information regarding whether this company had any affiliation with Rubberflex's customers or suppliers. However, Rubberflex declined to produce such information. Rubberflex merely stated, as it does in its case briefs, that the affiliated European resellers have no relevance to Rubberflex's sales in the home market and the United States. Consequently, the Department was unable to satisfy itself regarding whether any related-party sales, loans, equipment purchases or raw material purchases occurred during the POR. As the U.S. Court of International Trade stated *Krupp Stahl A.G.* v. *United States,* 17 CIT 450; 822 F. Supp. 789, 792 (1993), it is inappropriate for respondents to limit or control which information they present to the Department in a way that it impedes the Department's ability to confirm the accuracy of the questionnaire response or forces the

Department to use information most beneficial to them.

Comment 16: Direct Material Costs.

Rubberflex claims that the Department verified the direct material costs used in its cost of production (COP) and constructed value (CV) submissions. Rubberflex contends that the Department examined the following steps Rubberflex used to calculate the direct material costs: (1) the compound recipes of direct materials latex and chemicals used as the basis for determining product-specific cost of productions for all types of rubber thread; (2) the budgeted costs used to derive the standard per-unit costs; (3) the actual cost of materials used; and (4) the variance between standard and actual material costs. Rubberflex argues that the Department verified the steps by examining batch records (computer listings which aggregate a number of invoices that will appear as a single line item in the general ledger), testing inventory formulas, and determining that Rubberflex accurately captured and reflected all direct material costs incurred during the review period.

Rubberflex notes that the Department questioned the budgeted costs because they were derived in 1991 and differed from the weighted-average costs of materials in inventory. Rubberflex stated that these budgeted costs had not been revised since 1991 because they were still a reasonable estimation of the costs of the various materials used to produce rubber thread and none of the costs had changed significantly. Rubberflex argues that the budgeted costs are a reasonably accurate tool for predicting costs over time.

DOC Position: We disagree with Rubberflex that per-unit direct materials cost was verified. We did verify the total material cost during the POR as well as the actual quantity of materials used. However, neither of these figures alone is sufficient to calculate the per-unit cost reported in the questionnaire response. Rubberflex reported its per-unit material cost by multiplying actual material used per product by standard material prices to arrive at a standard cost. To calculate a variance Rubberflex calculated the total material cost at standard; it then made a factory-wide adjustment for the difference between total actual material cost and the total material cost at standard. This methodology is not, in itself, a problem.

There are two problems which arise from Rubberflex's use of the 1991 standard prices. The first is that Rubberflex was unable to substantiate how those prices were calculated in 1991 and what those figures represent. Therefore, it is not possible to evaluate the accuracy of the per-unit cost calculations. Rubberflex made no attempt to demonstrate that these prices were reasonable, or that the use of 1991 prices to calculate costs for 1995 products was non-distortive.

The second problem is that the 1991 standard prices presumably reflect the relative prices sometime prior to that time. However, these relative prices have changed. As the verification report on page 16 states, we compared the 1991 standard prices with the actual POR prices and found that the prices of individual materials increased or decreased at different rates. Because each product uses a different mix of materials, the cost of producing each different product would change relative to the cost of other products produced in the factory. However, by applying as a factory-wide variance the total actual material cost as compared with the 1991 standard prices, Rubberflex reported per-unit material costs failed to account for the changes in the relative costs. Thus, these costs are inaccurate.

Comment 17: Direct Labor Costs.

Rubberflex contends that the Department verified its labor costs in full. Rubberflex argues that it used the following steps to calculate the direct labor costs reported in its COP/CV submissions: (1) calculate actual direct labor cost per minute of production by dividing total direct labor costs during the review period by the total production time during the review period; (2) allocate the cost per minute to specific products based on the standard number of minutes required to produce particular types of rubber thread; and (3) adjust the product-specific costs calculated using the standard yield for the variance between actual and predicted factory operation.

Rubberflex notes that at the beginning of verification, it disclosed certain minor revisions, and provided a corrected worksheet, to the Department. Rubberflex claims that a side-by-side comparison of the original and corrected worksheets reveals only minor corrections. In order to verify the corrected worksheet, Rubberflex states that it traced all of the reported expenses to its trial balance, and traced from the trial balance to the general ledger and relevant source documentation.

DOC Position: We agree that Rubberflex followed the method it outlined to determine direct labor expenses. However, we disagree with Rubberflex's characterization that these expenses were fully verified. *See DOC Position* to comment 14. Rubberflex failed to clearly demonstrate the impact of these changes on the calculations in the questionnaire response. For example, Rubberflex contends that the revised data was merely a reclassification. Despite the fact that much of Rubberflex's explanation is *post hoc*, their own exhibits belie their assertions. An examination of the exhibits placed side-by-side in exhibit 3 of Rubberflex's brief reveals numerous and significant differences in the exhibits, differences not explained at verification nor in the case brief.

A second problem arose during the verification of labor expenses. As we explain on pages 13 of our February 14, 1997 verification report, Rubberflex failed to provide the original source documentation for managerial labor, despite the Department's request, thus ''placing control . . . in the hands of uncooperative respondents who could force Commerce to use possibly unrepresentative information most beneficial to them.'' *Krupp Stahl,* 822 F. Supp. at 792.

Comment 18: Variable Overhead Costs.

Rubberflex contends that at the beginning of verification, it disclosed to the Department two minor errors concerning its variable overhead costs: (1) Rubberflex reported the salary of the factory supervisor and manager as variable overhead costs, rather than fixed overhead costs; and (2) certain components of variable overhead needed to be corrected to reflect year-end adjustments. Rubberflex stated that a corrected worksheet reflecting this reallocation was submitted to the Department during the cost verification. Rubberflex claims that a side-by-side comparison of the original and corrected worksheets reveal only minor changes. Rubberflex states that the costs were verified by the Department and that final expense figures used were appropriately recorded in monthly accounts, according to the Department's verification report. In addition, Rubberflex states that these minor changes were necessitated by adjustments made by the auditors after performing a physical inventory of materials.

DOC Position: We disagree. *See DOC Position* to comment 14.

Comment 19: Fixed Overhead Costs.

Rubberflex contends that at the beginning of verification, it disclosed to the department several minor errors concerning its fixed overhead costs: (1) Rubberflex reported the salary of the factory supervisor and manager as variable overhead costs, rather than fixed overhead costs; (2) the cost of all benefits for workers in the factor was included in fixed overhead cost, rather than being allocated among direct labor

costs, fixed overhead costs, and packing labor costs; and (3) Rubberflex's auditor made a provision for writing-off finished goods inventory, which did not exists at the time of the original questionnaire response. Rubberflex stated that it provided a corrected worksheet reflecting this reallocation during the cost verification. Rubberflex contends that the magnitude of any corrections made with regard to the original worksheet were minor. Rubberflex contends that the Department verified the corrected worksheet by tracing expense amounts to source documents, the trial balance and the general ledger.

DOC Position: We disagree. *See DOC Position* to comment 14.

Comment 20: Depreciation.

Rubberflex claims that the Department verified the reported depreciation figures by tracing the figures to the trial balance, general ledger, asset schedules, and selected purchase invoices for assets. Rubberflex disputes the Department's finding in the verification report that it could not rely on the accuracy of reported depreciation expense due to the fact that the ''original cost basis'' for certain assets acquired prior to 1990 could not be traced to the appropriate asset schedule in the year of purchase. Rubberflex justifies its inability to produce ''original cost basis'' information on certain assets by claiming that: (1) it is unreasonable for accounting or tax purposes to maintain accounting documents for more than five years, particularly where Malaysian tax authorities do not require the retention of these documents for that period of time; (2) Rubberflex was not notified that such documents may be needed for verification purposes; and (3) the Department traced the annual depreciation for assets purchased before 1990 to trial balances and asset schedules for fiscal years 1993, 1994, and 1995, and could plainly see that the assets were being depreciated in a systematic manner, which was reviewed and approved by its auditors. Therefore, Rubberflex claims that its inability to provide original asset schedules for years prior to 1990 does not provide grounds for the Department to question the accuracy of the reported costs.

DOC Position: We disagree with Rubberflex that its inability to provide original asset ledgers for certain items requested is not a verification problem. The verification report specifies that we became aware that Rubberflex purchased certain major pieces of capital equipment from an affiliated party. Examples of these purchases are recorded on verification exhibit 36. Page 18 of the verification report notes that we attempted to determine whether the transfer price of such equipment, and the associated depreciation expenses, represented arm's-length transactions. Rubberflex failed to provide information responsive to our request. Thus, we were unable to satisfy ourselves in this regard.

We agree that Rubberflex reported the depreciation expenses on its books and records, which were audited and in accordance with Malaysian GAAP. Normally we use the costs and expenses recorded on the company's books and records, provided that we are satisfied that such costs are non-distortive. In this case, we had reason to question whether the depreciation expenses recorded on Rubberflex's books where under- or overstated (*i.e.* distortive) by reason of an affiliated party transaction.

Finally, it is reasonable to request Rubberflex to document the figures that it used to record its depreciation expense on its books and records. Rubberflex depreciates certain machines and buildings for more than 5 years and reflects those figures on its books and records. It is standard verification practice to ask companies to demonstrate the figures, and to keep documentation supporting information submitted in an antidumping proceeding, for the purpose of verification. The U.S. Court of International Trade held in *Krupp Stahl,* 822 F. Supp. at 792, that, despite the fact that the German authorities did not require the company to maintain business records for more than five years, it did not absolve a respondent in an antidumping proceeding of the responsibility of providing source documents to support its questionnaire response.

Comment 21: General and Administrative (G&A) Expenses.

Rubberflex states that at the beginning of verification, it submitted a revised worksheet which properly captured certain G&A expenses. Some of these expenses were misclassified as G&A expenses in the original questionnaire response and, therefore, were not properly included in the worksheet for indirect selling expenses. Rubberflex further explains that it provided worksheets and source documentation which substantiated its allocation methodology with regard to indirect selling expenses and G&A expenses. Rubberflex contends that the Department traced the amounts shown in the revised worksheet to relevant trial balances, source documentation, and the general ledger.

DOC Position: We disagree, *See DOC Position* to comment 14. The G&A expenses in the original questionnaire response were presented in a different format from the G&A expenses in the revisions presented at verification, so direct comparisons are not possible. Rubberflex never presented a systematic explanation of how individual elements of G&A were affected by the revisions, nor how or why the total changed. Rather, as with variable overhead, the Department was left with insufficient time and information to evaluate the magnitude of the change. Again, this was a situation where a company's ''failure to reconcile its submitted costs to its normal books and records prevents us from quantifying the magnitude of the distortions which exist in its submitted data.'' *Certain Cut-to-Length Carbon Steel Plate From Sweden: Preliminary Results of Antidumping Duty/Administrative Review,* 61 FR 51898, 51899 (October 4, 1996) (the Department's position adopted in the final results of review, 62 FR 18396 (April 15, 1997)).

Finally, contrary to Rubberflex's assertion, it was unable to tie the specific line items from its revised worksheets to the audited financial statements. The fact that total profit, sales, and cost of goods sold (COGS) figures were traced is irrelevant. It is precisely the items which could not be traced—the components of G&A—which were under evaluation at verification.

Comment 22: Financing Expense.

Rubberflex states that while preparing for verification it discovered slight errors related to the amounts reported for bank charges and interest on bills refinanced. Rubberflex further states that these corrections were presented to the Department at verification and that it demonstrated the accuracy of the revised worksheet by tying the total financing expenses and interest received to the total expenses stated in the trial balance for financing expenses and interest received, respectively.

DOC Position: We disagree. *See DOC Position* to comment 14.

Comment 23: Conduct of the review.

Rubberflex contends that it fully cooperated under difficult circumstances during this proceeding and that the Department must bear a significant portion of the responsibility for any problems that arose at verification. In addition to the short preparation time given to Rubberflex prior to the verification, Rubberflex enumerates a list of Departmental procedural errors, which Rubberflex contends unfairly prejudiced its interests and resulted in the use of facts available in the preliminary results. According to Rubberflex, these procedural errors were due to the

Department's untimely handling of the case. Rubberflex stated that it did the best it could under these circumstances to cooperate fully and that it submitted its responses and verification exhibits in a timely manner, and prepared for the verification to the extent possible given the time available.

DOC Position: We agree with Rubberflex that there was a great deal of case activity within a relatively short period in 1996. However, we disagree that we unfairly prejudiced Rubberflex by our conduct of the case. The supplemental questionnaires for this and the prior review were relatively short and not overly demanding and Rubberflex was given adequate time to respond. The record reflects that Rubberflex was given several extensions of time to submit its data; in fact, Rubberflex was granted every extension request it made. Finally Rubberflex was given sufficient notice of the timing of verification, and the Department followed the same standard procedures, and issued a standard verification outline which was substantially similar for the verification of information in both the 1993–1994 and 1994–1995 review. These procedures were similar to those followed in the original investigation, when Rubberflex underwent verification. Thus, there is little evidence that the Department's conduct of the case placed an ''unreasonable'' burden on Rubberflex. Rather, in this case, as in virtually every case the Department conducts, the burden on respondents is to provide accurate and timely data which can be verified. To the greatest extent possible, the Department strives to be flexible with deadlines for respondents; ultimately, however it is respondents' responsibility to meet this burden. Nevertheless, we took into account Rubberflex's level of cooperation in this case in our selection of the appropriate facts available for Rubberflex's antidumping margin. *(See Facts Available for Rubberflex* section above.)

Comment 24: Rubberflex's Cooperation.

Rubberflex argues that the evidence on the record disputes the Department's assertion in the preliminary determination that Rubberflex failed to cooperate. Rubberflex contends that it timely filed its April 15, 1996 questionnaire response as well as its September 17, 1996 supplemental response. Further, Rubberflex argues that it prepared for verification to the best of its ability and prepared worksheets requested by the Department to the extent possible given the time constraints. Rubberflex states that in the second administrative review, the Department stated the Rubberflex ''cooperated throughout the administrative review by submitting questionnaire responses and with verification.'' Rubberflex argues that the level and quality of its participation in this review was precisely the same as the second review. Therefore, Rubberflex maintains that the Department cannot logically conclude that it did not cooperate in this review.

DOC Position: Rubberflex points to the Department's application in the preliminary results of the 1993–1994 review in this case of the second-tier ''cooperative'' BIA rate set forth in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping duty Orders,* 60 FR 10900 (February 28, 1995) to argue that the Department's treatment in this review is inconsistent with that of the prior review. Contrary to Rubberflex's characterization, there is nothing inconsistent about the Department's treatment of Rubberflex in theses two administrative reviews. We explained in our *Notice of Preliminary Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia,* 62 FR 6758 (February 13, 1997), concerning the 1993–1994 administrative review, that Rubberflex cooperated throughout the review by submitting questionnaire responses and by participating in verification. However, we found that information could not be verified and thus resorted to BIA pursuant to section 776(b) of the Act. Although the degree of cooperation by Rubberflex in the two reviews is substantially the same, this final results is governed by the new statutory provisions concerning the use of facts otherwise available. As stated in our Preliminary Results, Rubberflex has not cooperated to the best of its ability.

Comment 25: Partial Facts Available.

Because of the arguments presented, Rubberflex claims that the application of a total adverse facts available is not warranted. Rubberflex contends that during verification, it tied all information submitted in its original response to its trial balance, and ultimately, to its audited financial statements. Further, Rubberflex emphasizes that because the Department verified virtually all of the submitted sales and cost data, the fact that a few minor errors disclosed at the commencement of verification should not provide the legal basis for the Department to disregard its entire response and resort to adverse facts available. Rubberflex cites to prior Departmental determinations in which the Department states that it will resort to facts available ''only for those specific items of the response that it was not able to verify.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9167 (February 28, 1997); and *Certain Internal Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 5592, 5594 (February 6, 1997). Rubberflex concedes that it did not submit an error-free response. However, Rubberflex states that minor errors and corrections were presented to the Department during verification. Rubberflex argues that the fact that some corrections were not presented on the first day of verification does not provide the Department reasonable grounds for disregarding them because Rubberflex was provided only two days for verification preparation. Therefore, in light of the above-mentioned circumstances, Rubberflex's cooperation in this review, and that Rubberflex's claims that the Department was able to verify its responses, Rubberflex argues that the Department does not have legal grounds to use adverse facts available.

Petitioner contends that because the Department determined during verification that Rubberflex's questionnaire responses were wholly deficient and unverifiable, Rubberflex should therefore be assigned a total facts available rate. Petitioner cites to the Department's Analysis Memorandum of December 12, 1996 and verification report, which document Rubberflex's uncooperativeness due to misreportings, inaccuracies and omissions of certain information. Petitioner therefore argues that the Department should assess a margin which corresponds to criteria outlined in the Department's Antidumping Manual; ''* * * when a substantial amount of a response does not verify, the Department will normally assign the highest margin for the relevant class or kind of merchandise among (1) the margins in the petition, (2) the highest calculated margin of any respondent within that country * * *'' See U.S. Department of Commerce, Antidumping Manual, July 1993, Ch. 6, at 3. Further, Petitioner disputes that Rubberflex's claimed errors are minor. Petitioner contends that Rubberflex's purported justification for such errors, which Rubberflex claims were the result of year-end accounting adjustments, are unsubstantiated, and unpersuasive. Petitioner contends that any year-end

adjustments should have been reported long before verification. Petitioner emphasizes that even minor errors would nevertheless generate an inaccurate margin calculation, which would place the U.S. industry at a disadvantage, given that extruded rubber thread is a commodity, price-sensitive product.

Petitioner emphasizes that Rubberflex did not submit to the Department a listing of errors at the commencement of verification, nor was petitioner served such a list, as required by the Department's regulations. Petitioner contends that Rubberflex's claim that the Department was advised at the commencement of verification regarding certain errors in its submission is therefore of no consequence.

DOC Position: We disagree with Rubberflex that the Department was able to verify Rubberflex's questionnaire response and tie all of the information provided in the original response to the trial balance, and ultimately to the audited financial statements. We have addressed this issue in the *Facts Available for Rubberflex* section of this notice.

Comments Concerning Other Respondents

Comment 26: CEP versus EP Sales.

The petitioner alleges that Heveafil's ''back-to-back'' sales are CEP, and not EP sales, as reported in the questionnaire response. The petitioner argues that the name ''back-to-back'' sales indicates that the U.S. subsidiary makes the sale and determines the price of the merchandise in the United States. Petitioner also notes that both Heveafil's and Filati's April 22, 1996 questionnaire responses indicate that the company's per-unit price is not fixed until the U.S. subsidiary issues the invoice to the U.S. customer. (Heveafil's response at page A–10 and Filati's response at page A–13.)

Petitioner further contends that the Department has found that sales made under circumstances like those made by Heveafil and Filati are CEP sales. Petitioner notes that in *Brake Drums and Brake Rotors from the PRC; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 61 FR 53190, 53194 (October 3, 1996), the Department stated that the ''responsibilities of the U.S. affiliates go well beyond those of a processor of sales related documentation'' or a ''communication link'' and therefore designated the sales in question as CEP sales. Petitioners note that in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51882, 51885 (October 4, 1996), the Department found it more appropriate to determine that sales were CEP sales where: the U.S. subsidiary was the importer of record and took title to the merchandise; the U.S. subsidiary financed the relevant sales transactions; and the U.S. subsidiary assumed the seller's risk. Petitioner argues that Heveafil's and Filati's sales meet these criteria.

Heveafil and Filati contend that the Department has repeatedly treated ''back-to-back sales'' as EP sales in the original investigation and in all prior administrative reviews. They note that Commerce verified that the characterization of the sales is correct in both the original investigation and the first review.

Specifically, respondents argue that back-to-back sales must continue to be treated as export price sales, in accordance with the Department's practice for determining ''indirect'' purchase price/EP sales as set forth in *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 61 FR 18547 (April 26, 1996). Heveafil and Filati argue that because petitioner has not submitted any new factual information on the record to alter prior treatment of these sales, respondents contend the Department must not depart from previous determinations. Accordingly, Heveafil and Filati argue that back-to-back sales conform to the Department's practice in the following ways: (1) sales were made prior to importation; (2) subject merchandise was not introduced into the inventory of U.S. affiliates; (3) the subsidiaries selling activities are consistent with the EP classification; and (4) neither subsidiary is engaged in advanced marketing or product development. For the sales made prior to important, Filati and Heveafil further note that date of sale was reported as the bill of lading date, which occurred before importation, a methodology argued to be consistent with the Department's past determinations.

DOC Position: We agree that Heveafil's and Filati's ''back-to-back'' sales are properly treated as EP sales. With respect to EP sales, section 772(a) of the Act states that: ''the term 'export price' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.'' Based on the Department's practice, we examine several criteria for determining whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales, including: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where all criteria are met, the Department has regarded the routine selling functions of the exporter as ''merely having been relocated geographically from the country of exportation to the United States,'' and has determined the sales to be EP sales. Where all conditions are not met, the Department has classified the sales in question as CEP sales. *See, e.g., Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China,* 62 FR 9171 (February 28, 1997). Based on our analysis of the selling activities of Filati's and Heveafil's U.S. affiliates, we determine that EP is appropriate. The customary commercial channels between Heveafil and Filati their respective unaffiliated customers are that Heveafil and Filati ship the EP merchandise directly to the unaffiliated U.S. customer without having the merchandise enter into the inventory of the U.S. subsidiary, and that the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unrelated U.S. buyer. Moreover we disagree with petitioner's characterization that the U.S. affiliate sets the price after importation. There has been no record evidence submitted in this segment of the proceeding that would cause us to alter our treatment of these sales as EP sales.

Comment 27: Indirect Selling Expenses and Inventory Carrying Costs Incurred in the Home market for U.S. Sales.

Heveafil, Filati and Rubfil argue that indirect selling expenses and inventory carrying costs incurred in the home market should not be deducted from CEP under section 772(d) of the Act. They note that the Department articulated a standard whereby it deducts selling expenses incurred in the home market from CEP only if they are specifically related to commercial activities in the United States. (*See Antifriction Bearings (Other Than*

Tapered Roller Bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews 62 FR 2081, 2124 (January 15, 1997) and *Preliminary Results of Antidumping Duty Administrative Review: Calcium Aluminate Flux from France,* 61 FR 40396, 40397 (August 2, 1996).

DOC Position: We agree with Heveafil, Filati and Rubfil. In *Antifriction Bearings (Other Than Tapered Roller Bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews* 62 FR 2081, 2124 (January 15, 1997) states that the ''statutory definition of 'constructed export price' contained in section 772(d) of the Act indicates clearly that were are to base CEP on the U.S. resale price as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States.'' Our analysis of Heveafil's, Filati's and Rubfil's responses indicates that the indirect selling expenses and inventory carrying costs incurred in the home market were not specifically related to the economic operations of the U.S. affiliate. As a result, indirect selling expenses and inventory carrying costs incurred in the home market were no longer included in the CEP deduction. Consequently, we have revised our calculations to include in the CEP deduction only those expenses specifically related to the economic operations of the U.S. affiliate.

Comment 28: U.S. Packing Expenses.

Heveafil, Rubfil and Filati claim that we erroneously deducted U.S. packing expenses from the U.S. price. As stated by these respondents, the Act does not provide for the deduction of U.S. packing expenses from either EP or CEP.

DOC Position: We agree. These calculations were made in error and have been corrected.

Comment 29: Adjustments for Countervailing Duties (CVDs) Paid.

Heveafil, Filati and Rubfil contend that the Department must increase the U.S. price for certain countervailing duties paid on imports of the subject merchandise pursuant to the CVD order. In accordance with section 772(c)(1)(C) of the Act, the Department should increase U.S. price by the ''amount of any countervailing duty imposed on the subject merchandise to offset an export subsidy.'' The Department, however, has not made adjustments nor increased U.S. price for export subsidies if normal value (NV) has been based on constructed value. Respondents note that the Department has declined to make and adjustments when normal value is based on constructed value, on the grounds that any benefit conferred through the export subsidy is reflected in the production costs as well as in U.S. price. (*See Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia,* 61 FR 54767 (October 22, 1996).

Respondents also assert that export subsidies, specifically income tax holidays and income tax abatements, are not reflected in a company's production costs and must be included in an adjustment to U.S. price. They note that income taxes are not an element of the cost of production. Respondents note that the following Malaysian export subsidy programs found in the second and third countervailing duty reviews, qualify as income tax holidays or income tax abatements and thus, should be used in an adjustment to U.S. price: (1) Pioneer Status; (2) Abatement of Income Tax based on Ratio of Export Sales to Total Sales; (3) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports; (4) Industrial Building Allowance; and, (5) Double Deduction for Export Promotion Expenses.

DOC Position: We agree with respondents that the programs: (1) Pioneer Status, (2) Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales, (3) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports, (4) Industrial Building Allowance, and (5) Double Deduction for Export Promotion Expenses have been found countervailable and classified as export subsidies in the most recently completed countervailing duty review, *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 61 FR 55272 (October 25, 1996).

Therefore, in accordance with section 772(c)(1)(C) of the Act, we increase U.S. price by ''the amount of any countervailing duty imposed on the subject merchandise to offset an export subsidy.'' The most recently completed CVD review, *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 61 FR 55272 (October 25, 1996), found *ad valorem* net subsidies of 0.23% for Heveafil; 0.19% for Rubberflex; 1.39% for Filati; and, 0.38% Rubfil for 1994. In the context of an administrative review (as opposed to a less-than-fair value investigation), these rates, with the exception of Filati's, are *de minimis* pursuant to the language of the SAA, at page 939, and thus will not be collected, *i.e.*, ''imposed,'' within the meaning of section 772(c)(1)(C) of the Act. As a result, because we are comparing Filati's sales to the United States to home market sales or constructed value in the home market for this review, we will adjust the 1994 U.S. prices of Filati to account for the net export subsidies of 0.15%. We will also make adjustments to assessment and deposit rates for any export subsidies in the final results of the 1995 CVD review, which has not been completed.

Comment 30: Import Duties.

Filati claims that the Department erred in not making an adjustment for TAXH, which represents the impact of a duty imposed on imported inputs used to produce rubber thread which will later be exported, and is collected only on home market sales. Filati notes that TAXH is not collected on export sales. It claims that TAXH is included in the price of its home market sales and is passed on to its Malaysian customers, and, therefore, constitutes an indirect tax imposed directly upon the foreign like product which has not been collected on the subject merchandise. Therefore, Filati argues that TAXH must be deducted from normal value in accordance with section 773(a)(6)(B)(iii) of the Act. Alternatively, Filati proposes that the Department treat TAXH as a difference in circumstances of sale, and make a downward adjustment to normal value, in accordance with section 773(a)(6)(C)(iii) of the Act.

Rubfil maintains that the Department must deduct DUTYH from the home market price in the calculation of normal value since it claims, for the first time in its rebuttal brief, that DUTYH is the same 3 percent indirect tax adjustment reported by Filati, although Rubfil mistakenly referred to it as TAXH in the narrative portion of the response.

Petitioner disputes Filati's and Rubfil's arguments. It claims that Filati did not claim that the home market prices it reported to the Department include these indirect taxes. Petitioner notes that, as a general matter, respondents, including Rubfil, usually report home market prices to the Department already exclusive of indirect taxes. As a result, petitioner argues that TAXH should not be netted from reported home market sales.

DOC Position: We disagree that these expenses represent a tax. Both Filati's and Rubfil's April 22, 1996 questionnaire response identifies the expense reported in the TAXH or DUTYH column as a duty on imported merchandise. It is imposed when the goods are sold in the home market, and remains uncollected when the subject

merchandise is exported. Consequently, contrary to the respondents' characterization of the expense, the expenses recorded in the TAXH or DUTYH columns represent a duty, and not a tax. Filati and Rubfil explain that they include the amount of this duty in their home market price and pass it on to their customers. The duty is neither added to nor included in the price of the export goods. Because this duty is only collected on home market sales, and not on export sales, we have determined it to be an uncollected duty within the meaning of section 772(c)(1)(B) of the Act, rather than an uncollected tax within the meaning of 773(a)(6)(B)(iii) of the Act. Consequently, pursuant to section 772(c)(2)(B) of the Act, we have revised our calculations by adding the amount of the uncollected duty to the U.S. price.

Comment 31: Re-exports of Covered Merchandise.

Filati contends that it is the Department's long-standing policy, which has been upheld by the U.S. Court of Appeals for the Federal Circuit (*The Torrington Company* v. *United States,* 82 F.3d 1039 (Fed. Cir. 1996)), not to calculate or collect antidumping duties on subject merchandise that is re-exported without any sale to unaffiliated parties in the United States. Filati contends that the Department cannot calculate or collect antidumping duties regarding such imports, because in the absence of sales in the United States, there is no basis for calculating United States price. Thus, Filati explains, where a respondent provides evidence that merchandise has been re-exported, the Department has modified its assessment methodology formula to account for the re-exports. Filati argues that it provided evidence of such entries in its September 23, 1996 supplemental response and that there were no computer programming instructions in the preliminary results of review to accommodate such re-exports. Filati further argues that the Department should structure its assessment instructions along the lines outlined in the Department's proposed regulations (by dividing the total duties calculated for the period of review (PUDD) by the entered value of the sales during the POR, and directing Customs to apply the resulting *ad valorem* rule to entries in the POR) as modified by the ''per-unit'' methodology used in the Department's August 31, 1992 memorandum for Richard W. Moreland, *First Administrative Review of 3.5 Inch Microdisks and Coated Media Thereof from Japan (Microdisks) Decisions Made with Respect to Issuing Assessment Instructions for all Five Japanese Companies which had a either PP and ESP Sales Transactions of 3.5-Inch Microdisks and Coated Media.* Filati argues that this new *ad valorem*, assessment rate should be calculated as follows: PUDD/entered value of sales* (value of entries-value of re-exports)/ value of entries.

DOC Position: The Department agrees with Filati that it is inappropriate to calculate or assess antidumping duties on covered merchandise that is re-exported from the United States before the goods are sold to an unaffiliated party in the United States. An examination of the facts of this record indicates that all of the merchandise was entered into the United States commerce for consumption. However, at the time of entry, Filati did not know whether the merchandise would be sold in the United States or Canada. At the end of the review period, Filati was aware of which entries were sold in the United States and which were re-exported without a sale to an unaffiliated party in the United States. It reported U.S. sales to the Department in its questionnaire response, and the re-exports to Canada in its supplemental response.

Section 731 of the Act provides that once merchandise is subject to an antidumping order ''then there shall be imposed upon such merchandise an antidumping duty * * * in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise.'' Section 751(a)(2) of the Act provides that, in computing the amount of the antidumping duty, the Department ''shall determine'' (1) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (2) the dumping margin for each entry. Thus, sections 731 and 751(a)(2) of the Act call for the Department to determine the United States price (either the export price or the constructed export price). In the instant case, because there is no sale to an unaffiliated party in the United States, despite the fact that the goods have entered into the U.S. customs territory, there is no means by which the Department can calculate a United States price with respect to these particular imports. See *The Torrington Company* v. *United States,* 82 F.3d 1039, 1044–1047 (Fed. Cir. 1996) (''*Torrington*'') (held that the re-exported goods do not enter into the calculation of the total antidumping duties owed by the respondent).

Further the U.S. Court of Appeals for the Federal Circuit held in *Torrington* that under these circumstances the Department acts lawfully when it does not assess antidumping duties on the covered merchandise. *See Torrington,* 82 F.3d at 1040. The holding in *Torrington* sanctions the Department's longstanding practice in the regard. *See, e.g., Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 58 FR 39729, 39784 (July 26, 1993) (Department's position was that where the bearings that entered the customs territory of the United States were re-exported prior to sale to an unrelated customer in the United States, there is no assessment of antidumping duties on those entries). Finally, the *Torrington* Court held that, in upholding the Department's practice not to calculate a United States price or assess with respect to entries that are later re-exported from the United States without a sale here to an unaffiliated party, this practice does not conflict with the U.S. duty drawback laws. *Torrington,* 82 F.3d at 1045.

Comment 32: Currency Conversion Error.

Filati argues that the Department erroneously failed to convert its inventory carrying costs into U.S. dollars.

DOC Position: We agree and have corrected the error.

Comment 33: The Difference in Physical Characteristics of Merchandise (DIFMER) Calculation.

Heveafil contends that the Department incorrectly subtracted the DIFMER adjustment from home market prices since it calculated the DIFMER adjustment as the U.S. cost of manufacture (VCOMU) minus the home-market variable cost of manufacture (VCOMH). In this situation, the Department should add the DIFMER to the normal value (NV).

DOC Position: We agree that, pursuant to section 773(6)(c)(ii) of the Act, it is appropriate to add the DIFMER to NV when the DIFMER is calculated as VCOMU minus VCOMH. However, our standard program was written to subtract it from normal value. Therefore, to keep Heveafil's program in conformity with the Department's standard computer program, we recalculated DIFMER as VCOMH minus VCOMU, then subtracted it from NV. This equation is identical to the remedy proposed by Heveafil.

Comment 34: The Calculation of the Average Actual Profit for Constructed Value.

Petitioner contends the Department erroneously used Heveafil's, Filati's and Rubfil's average actual profit on both

profitable and unprofitable sales for the profit figure in the constructed value calculation. Petitioner argues that only profit on profitable sales is used in the calculation.

Respondents dispute petitioner's contention, arguing that the Department calculates constructed value profit without excluding below-cost sales. In support of its argument, respondents rely on *Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386, 403 (CIT 1996) and *Torrington Co.* v. *United States,* 881 F. Supp. 622, 633 (CIT 1995), as well as a number of results of reviews of *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof.*

DOC Position: We agree with petitioner. Section 773(e)(2)(A) of the Act states that the constructed value of the imported merchandise shall be the ''actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country.'' Section 771(15)(A) of the Act specifies that the Department shall consider the sales disregarded under section 773(b)(1) of the Act to be outside the ordinary course of trade. *See also* SAA, at 839. Therefore, we have changed our calculations to include only the profit from sales not disregarded under section 773(b) of the Act.

Respondents cite a number of instances where the Department and the courts have included sales below cost in the calculation of profit for constructed value. We not that all of the cases cited by respondents pertain to the calculation methodology spelled out in the old law, and have been superseded by the new law, which establishes new methods of calculating profit for CV. *See* SAA, at 839

Comment 35: The Use of Color as a Model Match Criterion.

Petitioner argues that color should be excluded as a matching criterion. Petitioner cites *Melamine Institutional Dinnerware from Taiwan: Final Determination of Sales at Less Than Fair Value (Melamine),* 62 FR 1726, at 1773 (January 13, 1997), in which the Department stated that ''[c]olor is not a matching criteria in this investigation; thus, it is inappropriate to treat these products, if otherwise identical, as identical for purposes of model matching.''

According to respondents, color should not be excluded as a matching criteria. Since color was used in the original investigation and subsequent reviews, the Department must apply the same matching criteria in this period of review.

DOC Position: We agree with respondents that color is an appropriate model matching-criterion in this case. The Department has consistently used color as a product matching criteria in the investigation and reviews of the AD order. As we stated in our response to Comment 3 in the *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465, 38468 (August 25, 1992) ''because color can materially affect cost and be important to the customer and the use of the product, the Department determined at an early stage of this investigation that color should be included among the several product matching criteria.'' *See, Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465 (August 25, 1992). At this time, petitioner supported this decision and has since not offered any substantive reasons for changing the matching criteria. Moreover, color is a characteristic fully in accordance with the matching criteria as outlined in the January 26, 1994 memorandum to the file, entitled *Changing the Department's Questionnaire Order of the Product Concordance.* Petitioner did not comment on this memo which ranked color as third in the level of importance for the product matching criteria. With respect to *Melamine,* this determination covers a product with different physical characteristics, different uses and different expectations by the ultimate purchasers and, therefore, is irrelevant to this instant case.

Comment 36: The Erroneous Deduction of CEP Profit from U.S. Sales.

Heveafil argues that the Department incorrectly deducted CEP profit from certain CEP sales, despite the fact that CEP profit calculated by Commerce was negative. Heveafil suggests that we refer to observations one and two in the hard-copy of the results of the Department's preliminary margin program. Heveafil suggests that the Department revised the calculation of net CEP sales prices in the final results of review to ensure that CEP profit is not subtracted where none exists.

DOC Position: We have examined the hard copy of the results of review for the 1994–1995 margin calculation program. None of the sales include CEP profit of less than zero. Therefore, we have made no change to our calculations.

Comment 37: Heveafil's Reported Cost Figures.

Petitioner notes that Heveafil reported more than one cost figure for a number of products without providing any explanation for the provision of more than one weighted-average cost. In addition, petitioner also notes that in its preliminary results of review, the Department erred in using the average of these cost figures to calculate the cost of production for Heveafil. Petitioner argues that by using this average cost, rather than the highest available cost, Heveafil benefits from the unexplained ambiguity in the response.

DOC Position: We agree. Heveafil reported more than one per-unit cost of production for certain products. However, in this case, there is no evidence on the record to suggest that the highest reported cost is appropriate. Consequently, we determined the simple average value of each of the underlying components of the COP: material, labor, variable overhead, fixed overhead, indirect selling expenses, general and administrative expenses, net interest expense and home market packing. We then added the revised values for these expenses to obtain the average COP of each of the reported models as we did in the preliminary results of review.

Comment 38: Rebates in Calculation of a Home Market Price for comparison to COP.

Petitioner asserts that the Department failed to deduct Heveafil's rebates for home market prices prior to conducting the sales below cost test.

DOC Position: As indicated on line 2821 of the home market sales program issued in the preliminary results of review, we have taken rebates and discounts into account in our determination of the appropriate home market price to be compared with the cost of production in our cost test. Therefore, we have made no change to our calculation.

Comment 39: Marine Insurance.

Petitioner asserts that Rubfil did not explain how it calculated its reported cost of marine insurance. Accordingly, it cannot be determined if marine insurance was correctly calculated. Petitioner therefore contends that the Department should use, as the facts available, the highest unit U.S. marine insurance cost to all U.S. sales by Rubfil.

Rubfil responds that in its April 22, 1996 response, it explained that marine insurance was paid according to the terms of a global insurance policy that covers all risks associated with the shipment of merchandise from Rubfil's factory to its customers throughout the world. Rubfil provided a copy of the insurance agreement in exhibit C–1, which did not explicitly spell out the per-shipment terms of the policy. Rubfil

notes that the Department did not request further information in its supplemental questionnaire. It argues that this policy has been in effect since 1990 and was spelled out in the narrative of the questionnaire response and was in effect during the 1994–1995 review. Therefore, Rubfil argues that the Department should not change its calculations.

DOC Position: In the December 19, 1996, Preliminary Results Analysis Memorandum for Rubfil, the Department noted that Rubfil did not fully explain its calculations for marine insurance. However, we used the information provided in the questionnaire response to calculate our margins. We did not request Rubfil to submit further information, and there is no basis for making adverse inferences as suggested by petitioner. Therefore, we have not changed our calculations in this regard.

Final Results of Review

As a result of comments received we have revised our preliminary results and determine that the following margins exist for the period October 1, 1994, through September 30, 1995:

Manufacturer/exporter	Percent margin
Heveafil Sdn. Bhd	7.88
Rubberflex Sdn. Bhd	20.38
Rubfil Sdn. Bhd	54.31
Filati Lastex Elastofibre (Malaysia)	8.11

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

Further, the following deposit requirements will be effective, upon publication of this notice of final results of review for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that for Filati the cash deposit rate will be reduced by 0.15 percent, the current cash deposit rate attributable to export subsidies); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigations.

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

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

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 771(i) of the Act (19 U.S.C. 1677f(i)) and 19 CFR 353.22.

Dated: June 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–16046 Filed 6–19–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the petitioner, the Fresh Garlic Producers Association and its individual members, and an importer, the Department of Commerce is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 1995, through October 31, 1996. Petitioner requested a review of eight exporters. Haitai America, Inc., a U.S. importer, requested a review of sales of its exporter/producer Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd. Because we have determined that one named respondent has failed to submit a complete response to our questionnaire and the remaining named respondents failed to respond at all to our questionnaires, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all producers/exporters of the subject merchandise.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Thomas O. Barlow, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On November 4, 1996, the Department published in the **Federal Register** (61 FR 56663) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order (59 FR 59209, November 16, 1994) on fresh garlic from the PRC. On November 27, 1996, petitioner requested an administrative review of eight producers/exporters of this merchandise