DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

ACTION: Extension of time limit for final results of antidumping duty administrative review of chrome-plated lug nuts from Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on chrome-plated lug nuts from Taiwan. This review covers 18 producers/exporters of chrome-plated lug nuts. The period of review is September 1, 1996 through August 31, 1997.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351.101, *et seq.* (62 FR 27296—May 19, 1997).

Extension of Preliminary Results

The Department initiated this administrative review on October 30, 1997 (62 FR 58703). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity of an issue in this case, it is not practicable to complete this review within the statutory time limit of 365 days. The Department, therefore, is extending the time limit for the final results of the aforementioned review to April 5, 1999. See memorandum from Holly A. Kuga to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: February 4, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On August 7, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1996, through June 30, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results. The final results are listed below in the section *Final Results of the Review*.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4195 or 482–3814, respectively.

Applicable Statute and Regulations

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

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1998, the Department published in the **Federal Register** (63 FR 42366) the preliminary results of the administrative review of the antidumping order on industrial nitrocellulose (INC) from the United Kingdom, 55 FR 28270 (July 10, 1990). We gave interested parties an opportunity to comment on the Preliminary Results. On September 8, 1998, we received a case brief from Imperial Chemical Industries PLC (ICI) (respondent). On September 9, 1998, we received a case brief from Hercules Incorporated (petitioner). On September 14, 1998, we received rebuttal case briefs from both respondent and petitioner. A hearing was held September 16, 1998. Based on our analysis of the comments received, we changed the final results from those presented in the preliminary results as described below in ''*Changes from the Preliminary Results*'' and ''*Interested Party Comments*'' sections of this notice. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Changes From the Preliminary Results

The Department corrected an error by removing from the calculation of NV sales to one affiliated customer that were not at arm's length. See Comment 5.

The Department corrected a clerical error that involves units of measure and affected the assessment rates. Rather than continuing to convert U.S. net price to kilograms, as was done in the preliminary determination, we have converted the foreign unit price to pounds. In addition, because the respondent reported total entered value for each transaction rather than on a per unit value, we did not multiply total entered value for each sale by the quantity. See Comment 6.

Interested Party Comments

Comment 1

The respondent argues that the Department should reclassify ICI's U.S. sales as export price (EP) for the final results. Respondent argues that it's U.S. sales process for INC satisfies both the statutory definition of EP sales and the three criteria set forth under the Department's judicially approved test for EP classification. Respondent asserts that based on the statutory definitions of both EP and CEP in 19 U.S.C. sections 1677a(a) and 1677a(b) respectively, only U.S. sales made ''before the date of importation'' can be classified as EP. Respondent argues that because its U.S. sales of INC are made before the date of importation, its U.S. sales meet the definitional requirement for EP treatment.

Respondent also argues that the key distinction between EP and CEP sales established by *P.Q. Corp.* v. *United States*, 652 F. Supp. 724,731 (Ct. Int'l Trade 1987) (*PQ*) is the involvement of affiliated entities in the U.S. sales process. Respondent claims that ICI's U.S. sales process satisfies the three criteria set forth under the Department's test of EP classification established in *PQ*. The three criteria are as follows: (1) The manufacturer must ship the merchandise directly to the unrelated buyer, without introducing it into the related selling agent's inventory; (2) this procedure must be the customary sales channel between the related parties; (3) the related selling agent located in the United States must act only as a processor of documentation and a communication link with the unrelated buyer. Respondent points to several court cases which it interprets to hold that CEP and the test for it are applicable only where there is a related selling agent, which is not the case in this review.

Respondent refers to the Statement of Administrative Action (SAA), which states that ''constructed export price is * * * calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers,'' to argue that because the stated objective of the CEP calculation is to approximate a non-affiliated price, it is ''inescapable'' that the affiliation is the predicate that enables the CEP analysis. Respondent argues that because the underlying goal of EP/CEP classification is to reconstruct at arm's length the transaction between the exporter and its related importer, the Department's decision to apply the third prong of the test to an unaffiliated party is not supported by the legislative history for the statute.

Respondent asserts that the Department's practice has been to apply this test only to activities of affiliated parties. Respondent argues that the record clearly supports the fact that the U.S. selling agent is unaffiliated and that the Department itself referred to the U.S. selling agent in question as ''unaffiliated'' in its verification report and Memorandum dated July 22, 1998. Respondent argues that as a result, the Department incorrectly applied the three-part test to sales made through unaffiliated parties in the preliminary results.

Respondent then argues that even if the Department determines that the analysis of the selling activities of unrelated parties is appropriate, CEP treatment is still not appropriate given the insignificant level of selling activities of ICI's U.S. selling agent. Respondent asserts that the record does not support ICI's U.S. sales agent's ''involvement in sales solicitation and price negotiation.'' Respondent claims that its U.S. selling agent has a very limited role in sales of INC to the United States, and that there is no evidence on the record to indicate that the U.S. selling agent solicits new customers and sales. Respondent points to the verification report, which states that it is the agent/distributors who place orders with ICI America (ICIA), ICI's U.S. subsidiary on their own behalf. As for price negotiation, respondent argues that CEP treatment is not appropriate where the foreign producer rather than the U.S. affiliate accepts or rejects the final sales terms to a U.S. Customer, as is the case here, evidenced by the verification report.

Respondent argues that this review is different from *Viscose Rayon Staple Fiber from Finland* (63 FR 32820), where the Department decided to use CEP, because in that case there was no *bona fide* give and take between the producer and the U.S. selling agent. In this case, there is correspondence indicating a give and take between ICI and its U.S. agent. *See Department's June 28, 1998 Report on the United Kingdom Sales Verification of ICI in the Third Administrative Review*, at exhibit 36.

Petitioner argues that the Department's classification of respondent's U.S. sales as CEP was correct. Petitioner states that according to 19 U.S.C. 1677a(a) and 1677a(b), U.S. sales made prior to the date of importation can be either EP or CEP.

The petitioner also points to the three prong test used by the Department to determine whether sales are EP or CEP. The criteria, recently re-stated in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews* 63 FR 13170 (March 18, 1998) (*Cold Rolled Steel*) and validated by the Court of International Trade in *Mitsubishi Heavy Industries, Ltd.* v. *United States* (''*Mitsubishi*''), 15 F.Supp. 2d 807 (CIT 1998) include the following: whether (1) the goods were shipped directly from the manufacturer to the U.S. customer; (2) this was the customary commercial channel between the parties; and (3) the U.S. sales agent was functioning merely as a ''processor of sales-related documentation'' and ''communications link'' with the unaffiliated U.S. buyer. If any of the three criteria are not met, the Department considers the U.S. sales agent not to be ancillary to the sales process and therefore, the Department classifies the sales as CEP.

Petitioner cites *Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review* 63 FR 32820 (June 16, 1998) (*Viscose from Finland*), where the Department determined that U.S. sales were CEP by applying the statutory definition of CEP and the Department's three-prong test to U.S. sales previously classified as EP. Petitioner argues that this case is similar to *Viscose from Finland*, and *Cold-Rolled Steel* because in those cases, the Department re-evaluated the respondents' activities related to U.S. sales, which had been categorized as EP sales in previous determinations, and determined that the function of the U.S. selling agent was substantially more than a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer.

Petitioner argues that whether or not ICI's U.S. representative is affiliated or non-affiliated is irrelevant to the CEP vs. EP determination. It is the role that the U.S. sales agent acts on behalf of the exporter which is important. In *Stainless Steel Wire From Spain: Notice of Final Determination of Sales at Less Than Fair Value* 63 FR 40391 (July 29, 1998), the Department stated: ''When

sales are made prior to importation through *an affiliated or unaffiliated* U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria in order to determine whether the sales are EP sales.'' (emphasis added). Petitioner points to several recent notices, including *Viscose from Finland*, where the Department either referred to the U.S. selling agent as ''affiliated or unaffiliated U.S. sales agent'' or simply as ''U.S. sales agent''.

Petitioner argues that the Department correctly applied its three-prong test to determine that respondent's U.S. sales were CEP transactions. Petitioner maintains that in order to qualify as EP sales, U.S. sales must pass all three prongs of the Departments test. While there is no dispute that ICI's U.S. sales pass the first two prongs, petitioner argues that numerous facts on the record show that ICI's U.S. sales agent is more than ''ancillary'' to the U.S. sales process. In fact, its activities constitute ''substantial involvement'' in the sales process and support the Departments determination of CEP sales.

Furthermore, petitioner argues that because ICI's U.S. sales agent made U.S. sales ''on behalf of the producer or exporter'' the sale is, by definition, a CEP sale. Petitioner argues that the statute includes activities of U.S. sales agents exactly like ICI's U.S. sales agent in the definition of CEP. Petitioner points to various services on the record performed by ICI's U.S. sales agent to support their claim.

In its rebuttal brief, respondent argues that two cases cited by petitioner, *Cold Rolled Steel* and *Mitsubishi*, support respondent's position that the Department's third prong has been only applied to the activities of U.S. affiliates and never to unaffiliated entities. Respondent refers to the CIT's statement in *Mitsubishi* that ''the test reflects that the key distinction between EP and CEP is the relationship between the exporter and the importer.''

Respondent further argues that both petitioner and the Department are incorrect to characterize ICI's U.S. sales agent as being substantially involved in the sales process. Respondent points to several verification exhibits, *See U.K. Verification Report*, which it claims demonstrate that the U.S. sales agent is not substantially involved in the sales process. Respondent refutes petitioner's claim that all sales are made through the agent. Rather, respondent claims that all sales are made through ICIA and not the agent. Respondent points to the Department's *U.K. Verification Report* to correct what respondent alleges are misrepresentations made by petitioner with regard to the selling agent's activities and role in the U.S. sales process of INC.

Department's Position

We agree with the petitioners. In our preliminary results of review, we examined the facts of this case in light of the statutory definitions of EP and CEP sales. Section 772(b) of the Act, as amended, defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation *by or for the account of the producer or exporter* of such merchandise *or* by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted'' (emphasis added). Section 772(a) of the Act defines EP as ''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, as adjusted.''

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. Moreover, the CEP definition expressly encompasses sales made on behalf of the exporter *or* an affiliated party. Thus, affiliation is not the key. To the contrary, for sales prior to importation, the decisive factor is where the selling activity takes place, *i.e.*, in or outside the United States. Distinguishing EP and CEP transactions based on where selling activity takes place is consistent with the purpose of ensuring that, where appropriate, expenses related to selling activity in the United States are deducted to reach a constructed ''export'' price.

Furthermore, based on the Department's practice, we examine several criteria for determining whether sales made prior to importation through a 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 this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, 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 where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales. (*See, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820, 32821 (June 16 1998); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170 (March 18, 1998).)

The crucial distinction lies in the last factor, *i.e.*, whether the entity in the United States acted only as a processor of documentation and a communication link. This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate.

Our analysis of the facts indicates that, while ICI's U.S. sales meet the first two conditions, they fail to meet the third one. ICI engaged a U.S. selling agent who is substantially involved in the process of selling INC in the U.S. Discussion of the agent's selling activities in a public notice is not possible due to their proprietary nature. For a complete discussion of the classification of ICI's U.S. sales including a discussion of the agent's role in pricing decisions, *See* Memorandum to Holly Kuga, January 29, 1999.

The Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond an ancillary role. Therefore, even if the agent's role is not autonomous with respect to the final sales terms as respondent claims, this does not mean that its role in the process is ancillary. (*See Final Results of Antidumping Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 63 FR 13170 (March 18, 1998).) Because selling activities of ICI's agent were more than ancillary to the sales process in the U.S., we determine that ICI's U.S. selling agent is substantially involved in the sales process for INC, *i.e.*, the function of the U.S. selling agent is not limited to that of a ''processor of sales-related documentation'' and a

''communications link'' with the unaffiliated U.S. buyer.

While a sales agent, even one unaffiliated in an equity sense, can be an affiliated party within the meaning of section 771(33) (*see Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24403 (May 5, 1997); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa*, 60 FR 22550 (May 8, 1995)), the question of affiliation is not decisive in determining whether CEP treatment is appropriate. As the language in Section 772(b) of the Act states, CEP methodology is required if the subject merchandise is first sold (or agreed to be sold) *in the United States* ''*by or for the account of the producer or exporter* of such merchandise *or* by a seller affiliated with the producer or exporter.'' (emphasis added). As a result, if, as in this case, an entity in the U.S. is substantially involved in selling in the United States on behalf of or for the account of the producer, CEP methodology is required. Accordingly, we have determined that the price for ICI's U.S. sales of INC are CEP.

Comment 2

Respondent claims that the Department has fundamentally departed from its longstanding methodology for EP/CEP classification in prior administrative reviews by shifting the focus from the related importer to an unaffiliated entity. Respondent argues that this departure from the Department's methodology for EP/CEP classification denies respondent ICI due process and violates agency practice. Respondent argues that for the preliminary results in this review, the Department applied the same methodology of the three prong test to essentially the same facts, as in previous reviews, but reached the opposite conclusion. Further, the only factual difference between this review and the previous two, where the Department treated ICI's sales as EP, is that the U.S. sales agent is unquestionably unaffiliated. Respondent argues that the Department can not arbitrarily abandon a methodology without a relevant change in the facts presented, or at least provide an explanation for changing its practice. *See Cinsa* v. *United States*, 966 F. Supp. 1230, 1238 (Ct Int'l Trade 1997)(*Cinsa*). Respondent asserts that the Department's CEP determination is arbitrary because the change is unsupported by any factual findings except the fact that the U.S sales agent is now unaffiliated which gives only more weight to the sales being classified as EP.

Respondent argues that the Department's change in EP/CEP methodology is unwarranted because it does not represent an improved basis for EP/CEP calculations, and violates principles of administrative equity. *See Shikoku Chemicals* v. *United States*, 795 F. Supp. 417, 418–19 (Ct Int'l Trade 1992). Since ICI was not notified of a Departmental change in the EP/CEP analysis, ICI was not given the opportunity to fully develop the administrative record to support its EP claim, nor relevant adjustments to CEP sales such as CEP profit and CEP offset. Respondent argues that principles of procedural fairness dictate that when an agency changes its methodology, interested parties must have advance notice and an opportunity to present relevant factual information on the record addressing the new methodology.

Petitioner argues that the Department's actions were procedurally fair and protected respondent's right to due process. Petitioner points to *Asociacion Colombiana de Exportadores de Flores, et al.* v. *United States* 6F. Supp. 2nd 865, 1998 Ct.Int. Trade Slip Op. 98–33, March 25, 1998, dated as Amended June 29, 1998, which articulated the CIT's standard of review for the Department's decisions under the antidumping law: (1) Whether the Department's determination was in accordance with law, and (2) whether the Departments conclusions are based on substantial evidence on the record. In this case, petitioner argues, the statutory definition of CEP is clear and unambiguous. As to the second point, petitioner points to substantial evidence on the record which justifies the Department's CEP determination.

Petitioner argues that the three prong test that the Department uses to determine whether a respondent's sales are EP or CEP is not new and has been consistently used and approved by the court. The Department is free to apply the three prong test in each review and base the results on the facts in that review, not on the facts in the preceding reviews. Furthermore, petitioner argues that the respondent was aware of the Department's reconsideration of its U.S. sales because the Department requested additional information including activities of ICI's U.S. sales agent and data on indirect selling expenses for U.S. sales.

Department's Position

In essence, respondent argues that because we applied EP methodology in prior reviews, it is unfair to apply in the current review what they argue is a new, broader CEP test which encompasses unaffiliated parties. We disagree on several grounds. First, as discussed above in response to Comment 1, section 772(b) of the current statute expressly requires CEP methodology where sales are made in the United States on behalf of the foreign producer, regardless of whether the entity selling in the United States is an affiliate. Thus, we have in recent cases more closely scrutinized the selling activities of parties in the United States, whether or not they are affiliated, to ensure that we are correctly applying the statute. *See Roller Chain, Other Than Bicycle From Japan; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 25450, 25457 (May 8, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 40391, 40395 (July 29, 1998); *See also, Viscose from Finland*. To the extent that respondent views this as a change in policy, we note that it is a basic principle of administrative law that an agency may change its policies and practices as long as it articulates the reasons for doing so. *See British Steel Plc* v. *United States*, 127 F.3rd 1471, 1475 (Fed. Cir. 1997).

Further, each review is a separate segment of the proceeding with a separate and distinct factual record. Respondent had ample opportunity in this review to present information and arguments pertaining to CEP treatment, as is evident from its questionnaire responses and case brief. As discussed in Comment 1, above, the issue is not affiliation, but rather the role of the agent in the U.S. sales process and the facts on record in this review support our conclusion that the role of ICI's agent in the United States is substantial. Therefore, CEP treatment is warranted. In any event, we note that respondent's assertion that the U.S. agent is unaffiliated is not necessarily accurate. Affiliation is not limited to equity relationships; it also encompasses relationships in which one party controls another. However, because affiliation is not key to an analysis of whether CEP treatment is warranted, it was not necessary for the Department to determine whether any basis for a finding of affiliation between ICI and the selling agent exists to resolve this issue.

Comment 3

Respondent argues that if the Department continues to classify ICI's U.S. sales as CEP, then the Department should only deduct the payment to ICI's U.S. selling agent. Respondent asserts

that if the Department continues its methodology where it shifts its focus from the activities of the U.S. affiliate to the activities of an unrelated party, then it must make a similar shift in the universe of expenses to be deducted from CEP. Since the Department based its CEP determination on the activities of its unrelated U.S. selling agent, the only expense which the Department can deduct from CEP is the annual payment to the unrelated U.S. selling agent.

Respondent points to *Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 FR 18390 (April 15, 1997), where the Department focused on the activities of the U.S. affiliate in determining classification of CEP sales and based CEP deductions on selling expenses incurred by the U.S. affiliate that engaged in the selling activities. Respondent argues that because the Department didn't base its CEP determination on the activities of ICIA, there is no reason to deduct any of ICIA's expenses .

Petitioner disagrees with respondent's claim that only the payment to ICI's U.S. selling agent should be deducted. Petitioner agrees with the Department's methodology in the preliminary results. Petitioner maintains that failing to deduct all U.S. selling and indirect expenses would result in an artificially high U.S. price. It would exclude from the dumping margin calculation a significant cost to the respondent's sale in the U.S. market, while including the cost in the other market.

Departments Position

We agree with the petitioner. Under section 772(d)(1), CEP must be reduced by the amount of direct and indirect selling expenses associated with economic activity in the United States. *See* also The Statement of Administrative Action Accompanying the Uruguay Round Agreements Act at 823. Thus, all direct and indirect selling expenses incurred in connection with a sale to the unaffiliated U.S. customer must be deducted to arrive at the CEP. The indirect selling expenses of ICIA (*e.g.*, order processing) were incurred in connection with the sale to the unaffiliated U.S. customer. Therefore, we have deducted those expenses in calculating the CEP. For a complete description of ICIA's U.S. expenses related to selling the subject merchandise to the United States, see ICI's Supplemental Questionnaire Response, April 3, 1998, Exhibit C–16.

Comment 4

Respondent argues that if the Department persists in treating ICI's U.S. sales as CEP transactions, ICI is entitled to a CEP offset to account for differences between the home market level of trade (LOT) and the LOT of the CEP. ICI is entitled to a CEP offset adjustment pursuant to Section 1667b(a)(7)(B) because (1) sales in the home market occur at a different, non-comparable LOT; (2) a LOT adjustment completely accounts for the differences between the levels of trade in the U.S. and home market (3) the LOT in the comparison market is more remote than the CEP LOT; and (4) there is adequate information in the record to make the CEP offset.

Respondent argues that the Department incorrectly concluded in its preliminary results that the normal value (NV) LOT was identical to the CEP LOT. Respondent claims that vastly different sales efforts are involved in selling to home market customers and so, more expenses are incurred in selling to the home market than are incurred in making CEP sales to ICIA. ICI's CEP selling expenses are limited to communication expenses resulting from order entries because all sales were to its wholly-owned subsidiary unlike home market sales which were to unaffiliated end-users. Respondent asserts that ICI's home market sales are more remote in the chain of distribution than are sales at the CEP LOT, and that this is demonstrated by the significantly greater number of selling functions performed in connection with home market sales as compared to the functions involved in making CEP sales to ICIA. Respondent asserts that in its home market, ICI incurs selling expenses which include sales personnel, customer service representatives and technicians, and marketing activities to expand sales, while its U.S. expenses consist of significantly fewer functions and thus, less expenses.

Petitioner disagrees. In the preliminary results, the Department determined that all of respondent's sales in the U.S. and the home markets were at the same LOT. Petitioner argues that this determination was based on respondent's response to the questionnaire. In its response, respondent said that it sells to end-users and distributors in both markets, identical services are provided in both markets, and there are identical channels of trade in both markets. (*See* Questionnaire Response, October 31, 1997). Therefore a LOT adjustment is not necessary.

Department's Position

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or when NV is based on constructed value, the LOT is that of the sales from which we derive selling, general and administrative expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*). The statute and the SAA support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer—that is, the level after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has adopted this interpretation in previous cases. *See e.g. Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50872 (September 23, 1998).

To evaluate the LOT, we examined information regarding the distribution systems in both the U.S. and U.K. markets, including the selling functions, classes of customer, and selling expenses for the respondent. Customer categories such as distributors, retailers, or end-users are commonly used by petitioners and respondents to describe different LOTs, but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling function substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process in both the home market and the United States begins with goods being sold by the producer and extends to the sale of the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market sales, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even

substantial ones, are not sufficient alone to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

We compared the channels of distribution and selling functions in the U.S. and home markets. The channels of distribution are similar for both markets with ICI selling mainly to end-user customers who use INC in their manufacturing process. At the level of the constructed export sale to the United States, *i.e.*, after the deductions required under section 772(d), we found the following selling activities were performed by ICI: taking orders, order processing, issuing confirmations, projecting ship dates, and arranging transportation. ICI performs these same selling functions, plus invoicing, when selling in the home market. Because the channels of distribution and selling functions are essentially identical in both markets, we find that there is no difference in the CEP and NV levels of trade. Because there is no difference in level of trade, there is no basis for granting a CEP offset.

Comment 5

Petitioner argues that the Department should correct a clerical error, *i.e.*, failure to remove non-arm's-length sales from calculation of NV. In the preliminary results the Department stated that it ''excluded sales to one affiliated customer in calculating NV because we determined that sales to this customer were not made at arm's-length prices (i.e., at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers).'' The *Preliminary Results Analysis Memorandum to the File* similarly discusses the exclusion of non-arm's-length sales from the calculation of NV. However, an error in the program resulted in the inclusion of non-arm's-length sales from the calculation of NV.

The respondent did not comment.

Department's Position

The Department agrees with the petitioner and has corrected this error by excluding sales to one affiliated customer in calculating NV because we determined that sales to this customer were not made at arm's-length prices.

Comment 6

Petitioner argues that the Department should correct a clerical error made in calculating the assessment rate. Petitioner asserts that the Department inadvertently multiplied total entered value for each sale by the quantity, which was not necessary because respondent reported total entered value for each transaction, rather than a per unit value.

Respondent argues that there is an error in the calculation of the commission offset that should be corrected. The error results in the incorrect comparison of kilograms to pounds. The respondent argues that the U.S. commission field should be converted to kilograms to make a valid comparison. Respondent further argues that two variables, EMARGIN and VALUE, are incorrect because a variable used to create them was based on pounds rather than kilograms. Respondent adds that the quantity listed in section I of the *Preliminary Results Analysis Memorandum to the File* should be expressed in pounds, not kilograms.

Department's Position

We agree with both respondent and petitioner that there is a clerical error that involves the assessment rates and the units of measure. However, we disagree with respondent on the solution. Rather than continuing to convert U.S. net price to kilograms, as was done in the preliminary determination, and make the changes requested by respondent, we have converted the foreign unit price to pounds. This is the standard method of weight conversion used in the standard program. In addition, since respondent reported total entered value for each transaction, rather than on a per unit value, we did not multiply total entered value for each sale by the quantity.

Final Results of the Review

As a result of our review, we determine that the following margin exists for the period of July 1, 1996 through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Imperial Chemicals Industries PLC	18.2

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR.

The following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of industrial nitrocellulose from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 11.13 percent, the ''all others'' rate established in the LTFV investigation (55 FR 21058, May 22, 1990). These deposit requirements 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 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled 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 19 CFR 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 sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3279 Filed 2–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

[International Trade Administration]

[A–475–818]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy

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

SUMMARY: On August 7, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Italy. The review covers shipments of this merchandise to the United States by eight respondents during the period January 19, 1996, through June 30, 1997.

For our final results, we have found that, for certain exporters, sales of the subject merchandise have been made below normal value. We will instruct the Customs Service to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Case History

This review covers the following manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Italy: (1) Arrighi S.p.A. Industrie Alimentari (''Arrighi''); (2) Barilla Alimentari S.r.L. (''Barilla''); (3) F. lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''); (4) Industria Alimentari Colavita S.p.A. (''Indalco''); (5) La Molisana Industrie Alimentari S.p.A. (''La Molisana''); (6) Pastificio Fratelli Pagani S.p.A. (''Pagani''); (7) N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''); and (8) Rummo S.p.A. Molino e Pastificio (''Rummo'').

On August 7, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 63 FR 42368 (*Preliminary Results*). From July 22 through July 30, 1998, we verified the cost information submitted by De Cecco [1]. From July 27 through July 31, 1998, we verified the cost information submitted by Puglisi. On September 23 and September 24, 1998, we received case briefs from the following parties: (1) Borden Foods Corp., Hershey Pasta and Grocery Group, Inc., and Gooch Foods, Inc. (collectively, ''the petitioners''), (2) the five manufacturers/exporters that responded to our requests for information (De Cecco, Indalco, La Molisana, Puglisi, and Rummo); (3) Barilla; and (4) World Finer Foods, Inc. (''World Finer Foods''), an importer of pasta produced by Arrighi. We received rebuttal briefs from the petitioners, De Cecco, Indalco, Puglisi, and Rummo from October 6 through October 8, 1998. On the basis of requests by interested parties, a public hearing was held on October 19, 1998.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, by QC&I International Services or by Ecocert Italia.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders, (*see* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997).

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. (*See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.)

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation against Barilla S.r.L., an Italian producer and exporter of pasta. On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Act, circumvention of the

[1] We verified De Cecco's sales information prior to the *Preliminary Results*, from May 4–8, 1998.