Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

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

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

SUMMARY: On November 9, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Elastofibre (Malaysia) (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd (collectively Heveafil), Rubberflex Sdn. Bhd. (Rubberflex), and Rubfil Sdn. Bhd. (Rubfil)). The period of review (POR) is October 1, 1996, through September 30, 1997.

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

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, AD/CVD Enforcement Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1996–1997 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (63 FR 60295). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

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

Applicable Statute and Regulations

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

Facts Available

A. Rubfil

In accordance with section 776(a)(2)(A) of the Act, we determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in November 1997. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to calculate Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

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

B. Corroboration of Secondary Information

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

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

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

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to

the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for Filati, Heveafil, and Rubberflex, as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and CEP Offset

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

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

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers). In order to determine whether NV was established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transactions which exclude economic activities occurring in the United States. We found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 2, 1998. *Also see Comment 2* in the ''Analysis of Comments Received'' section of this notice.

Constructed Export Price

For all sales by Filati, Heveafil, and Rubberflex, we based the starting price on CEP, in accordance with section 772(b) of the Act. For Filati, we have treated sales shipped directly from Malaysia to the U.S. customer as CEP sales because we find that the extent of the affiliate's activities performed in the United States in connection with these sales is significant. For further discussion, see *Comment 1* in the ''Analysis of Comments Received'' section of this notice.

In addition, for all three companies, we revised the reported data based on our findings at verification.

A. Filati

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

We made additional deductions to CEP, where appropriate, for commissions, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12754, 12758 (Mar. 16, 1998) (*Thread Fourth Review*); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043, 54075 (Oct. 17, 1997) (*AFBs*). *Also see Comment 3* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

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

B. Heveafil

In cases where Heveafil shipped merchandise directly from Malaysia to U.S. customers, we used the bill of lading date as the date of sale for these shipments, rather than the date of the U.S. invoice as reported. For these shipments, we find that there is a long lag time between the date of shipment to the customer and the date of invoice. Therefore, in accordance with our policy and consistent with the preliminary results, we used the bill of lading date as the date of sale. *See* the concurrence memorandum issued for the preliminary results of this review, dated November 2, 1998, for further discussion.

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia.

We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, repacking expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Regarding indirect selling expenses, we disallowed an offset claimed by Heveafil relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance the Department's practice. *See Thread Fourth Review* and *AFBs*.

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

C. Rubberflex

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

We made additional deductions to CEP, where appropriate, for credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

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

Normal Value

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

Pursuant to section 773(b) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their COPs in this review because the Department had disregarded sales below the COP for these companies in the most recently completed administrative review. *See Thread Fourth Review*. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

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

Except as follows, we used the respondents' reported COP amounts to compute weighted-average COPs during the POR:

Regarding the COP data reported by Filati, we found that in certain instances Filati reported multiple costs for a single control number. In those cases, we used the higher of the costs for purposes of the final results. In addition, we disallowed a portion of an offset claimed by Filati to its reported financing expenses because Filati was unable to demonstrate at verification that this offset was related to short-term income. *See Comment 8*.

Regarding the COP data reported by Heveafil, we reclassified certain variable overhead expenses as fixed overhead, based on our findings at verification. We also adjusted the company's financing expenses to reflect our findings at verification. Finally, as facts available we increased the material costs reported for one product by the percentage by which the reported costs differed from the standard costs observed at verification. *See Comment 10*.

Regarding the COP data reported by Rubberflex, we increased these costs to include a portion of the 1997 year-end adjustments made by the company's auditors. *See Comment 12*.

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

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

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

In this review segment, we found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Company-specific calculations are discussed below.

A. Filati

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight,

pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

B. Heveafil

In all instances, NV for Heveafil was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts, where appropriate. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) if the Act, we also made deductions for home market credit expenses and bank charges.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

C. Rubberflex

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

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

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

Analysis of Comments Received

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

A. Filati

Comment 1: Treatment of Direct Container Sales

During the POR, Filati shipped certain sales directly from the factory in Malaysia to its U.S. customers. The Department treated these ''direct container'' shipments as CEP sales for purposes of the preliminary results. Filati argues that this treatment was incorrect, based on the Department's criteria for determining whether a sale is an EP transaction (rather than a CEP sale). Filati relies in large part upon the Department's determination in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547 (Apr. 26, 1996) (*Carbon Steel from Korea*) to support its position. Filati asserts that *Carbon Steel from Korea* identifies the factors the Department will consider when determining the classification of sales. *Id.* at 18551. Whenever sales are made prior to the date of importation through an affiliated sales agent in the United States, the Department concludes that EP is the most appropriate determinant of the U.S. price where all of the following factors are present:

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

Filati contends that each of these criteria is met with respect to its direct container sales. Specifically, Filati states that, because the bill of lading date was reported as the date of sale and this date was prior to entry, the direct container sales were made prior to importation. In addition, Filati asserts that the first and second criteria are met, since: (1) the subject merchandise was shipped directly to the U.S. customer without being introduced into the physical inventory of Filati USA; and (2) direct shipments have been a normal commercial channel for the customer involved.

Regarding the third criterion, Filati argues that the Department erroneously found in the preliminary results that the activities carried out by Filati USA exceeded those of a document processor and communication link. Filati contends that the selling activities performed by Filati USA are within the range of activities previously determined by the Department to be consistent with EP classification.

Filati acknowledges that Filati USA takes title to the merchandise, invoices the customer, and in some cases, arranges and pays for delivery from the port of entry. However, Filati contends that Filati USA has only limited authority to set prices in the United States. As support for this assertion, Filati cites to the Filati USA verification report, where the Department noted that prices are quoted in accordance with a window that is set based on consultations with the parent company.

In addition, Filati asserts that the Department has accorded EP treatment to sales by respondents who performed selling functions that were more significant than those performed by Filati USA. Filati cites to *Carbon Steel from Korea* and *AK Steel Corp.* v. *United States,* Slip Op. 98–159 at 10–12 (Court of International Trade (CIT), Nov. 23, 1998) (*AK Steel*) in support of its position. In the former, the Department found that sales were properly classified as purchase price (the old-law equivalent of EP) transactions when the U.S. affiliate: (1) extended credit to certain customers by permitting them to

delay payment for subject merchandise, (2) identified customers; (3) negotiated prices; (4) provided some warranty-related services; (5) engaged in marketing activities that included development of downstream applications for subject merchandise; and (6) posted cash deposits of antidumping and countervailing duties on behalf of its U.S. customers. Filati argues that the activities performed by Filati USA are less significant than those performed by the respondent in *Carbon Steel from Korea*, because Filati USA is not involved in advanced marketing or product development. Consequently, Filati contends that there is even more justification for classifying its direct container shipments as EP transactions than there was in *Carbon Steel from Korea*.

Filati states that, in AK Steel, the CIT upheld the Department's EP classification of ''back-to-back'' sales where the U.S. affiliate: (1) took title to the shipment; (2) acted as importer of record; (3) made initial contact with the direct shipment customer; (4) negotiated price based upon predetermined factors; (5) received purchase orders from the customer and forwarded them to the exporter/producer for confirmation; (6) invoiced the customer; (7) conducted market research and economic planning; (8) ''found'' (and possibly solicited) direct container customers; (9) arranged and paid for post-sale warehousing, transportation, U.S. Customs duties, brokerage, handling, and other expenses; and (10) extended credit to and accepted payment from direct container customers. Regarding the instant case, Filati argues that, because there is no evidence that Filati USA ''found'' direct container customers or conducted market research and economic planning, Filati's activities relating to direct container sales were also less significant than those performed by the respondent in *AK Steel*.

Finally, Filati notes that the Department found that Filati's direct container shipments were PP/EP transactions in the second and third reviews of this proceeding. Filati contends that, because its method of making these shipments has not changed since the time of those reviews, the Department should continue to treat direct container sales as EP transactions in the instant review.

According to the petitioner, the Department correctly treated Filati's direct container shipments as CEP transactions. As support for its position, the petitioner cites to the Filati USA verification report at page 4, where the Department stated that Filati USA determines the prices for direct container sales. The petitioner also cites to the *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160, 9171 (Feb. 28, 1997) and *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 13217 (Mar. 18, 1998). In those cases, the Department determined that the respondents' sales were CEP transactions because it concluded that, in the former case, the U.S. affiliate was instrumental in determining the terms of sale, while in the latter, the selling functions of the U.S. affiliate extended beyond those of a processor of documents or a communications link.

DOC Position

We agree with the petitioner. 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'' (emphasis added).

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. The decisive factor for sales prior to importation 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.

It is the Department's practice to examine several criteria to determine 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 determined the sales to be EP sales. Where one or more of these conditions are not met 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) (*Viscose Rayon from Finland); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170 (Mar. 18, 1998).)

The crucial distinction between EP and CEP treatment 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. The classification of sales as EP or CEP is not confined to tallying up the various functions of the U.S. selling agent. In *Industrial Nitrocellulose From the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, 6611 (Feb. 10, 1999), we observed that ''[t]he Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond the ancillary role.'' As noted above, in cases where the U.S. affiliate or sales agent has a significant role in making U.S. sales (including setting the price in the United States and providing after-sale support), we generally find that CEP treatment is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 40391, 40395 (July 29, 1998) (*SSWR from Spain*); and *Viscose Rayon from Finland*.

Our analysis of the facts in this case indicates that during the POR Filati USA's role in making direct container sales was extensive. Specifically, Filati

USA: (1) Made initial contact with the customer; (2) transmitted the order to Filati in Malaysia; (3) quoted prices without consulting the parent company on a sale-by-sale basis; (4) took title to the merchandise; (5) invoiced, and received payment from, the customer; and (6) arranged and paid for delivery from the U.S. port to the customer. *See* the Filati USA verification report at page 4. Thus, the record shows that Filati USA was significantly involved in every aspect of the sales to U.S. direct container customers, except for arranging for shipment of the subject merchandise from Malaysia to the U.S. port of entry.

Filati USA's role in negotiating the terms of the sales in question is more significant than that of a conduit of information between the U.S. customer and the Malaysia parent. Specifically, Filati USA had the authority to contact U.S. customers directly, and then to negotiate and accept sales terms on a case-by-case basis without Filati's approval. Both of these functions contradict Filati's claim that the U.S. subsidiary's role is ancillary. The record of this case shows Filati USA's involvement in the U.S. sales process is extensive, as evidenced by the selling functions described herein. Based on these facts, we determine that Filati USA's role in making direct container sales exceeds that of a mere processor of sales-related documentation and communication link between the parent company and U.S. customer.

Filati argues that its sales should be classified as EP sales because its selling activities fall within a range of activities previously determined to be EP sales. However, as discussed above, this determination must be based on the facts as a whole. The facts here demonstrate that Filati is substantially involved in the selling of the subject merchandise. Therefore, CEP treatment is required.

We also find unpersuasive Filati's claim that Filati USA had limited authority to set prices because it did so only within parameters set by Filati. In similar circumstances, we have found the U.S. subsidiary's role in making the sales at issue to be significant enough to warrant their treatment as CEP sales. For example, in *SSWR from Spain,* we found that the U.S. subsidiary's ability to negotiate prices within the parameters set by the parent company, in conjunction with other sale related activities, was sufficient to warrant classification of those sales as CEP sales. In addition, in *U.S. Steel Group* v. *United States* Slip Op. 98–96 at 26 (CIT July 7, 1998), the CIT upheld the Department's classification of U.S. sales as CEP transactions, based in part on the U.S. subsidiary's ability to negotiate prices above the minimum set by the parent company.

We also find that Filati's reliance upon *Carbon Steel from Korea* is misplaced. The record on which that determination was based demonstrated that the U.S. subsidiary performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link. Moreover, in the most recent administrative review conducted on carbon steel from Korea, the Department reclassified the respondents' U.S. sales as CEP transactions based on record evidence establishing that the U.S. subsidiary was, in fact, substantially involved in selling the subject merchandise. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 13170, 13177 (Mar. 18, 1998) (*Carbon Steel from Korea II*) (the respondents' selling agent played a key role in the sales negotiation process by writing and signing sales contracts and a central role in all sales activities after the merchandise arrived in the United States).

We similarly find Filati's cite to *AK Steel* to be inapposite. In *AK Steel,* the CIT affirmed the Department's initial classification of direct container sales as EP transactions based on the fact that there was no evidence on the record to indicate that the U.S. subsidiary had the freedom to negotiate prices. More importantly, the CIT in *AK Steel* expressly distinguished its holding in that case from its prior holding in *U.S. Steel Group,* citing to this factual distinction as the basis for reconciling the decisions.

Consequently, consistent with the final results of the fourth review of this proceeding (*see Thread Fourth Review*) and the Department's current practice, we have continued to treat these transactions as CEP sales for purposes of the final results.

Comment 2: CEP Offset

Filati argues that the Department erroneously denied it a CEP offset in the preliminary results. First, Filati contends that the Department's finding that U.S. sales are made at the same level of trade as home market sales is inconsistent with its finding that the U.S. subsidiary performs significant selling functions. Specifically, Filati argues that, because the selling functions performed by the U.S. subsidiary are not taken into account when determining the selling functions in the CEP channel, it would be impossible to find that home market sales, which include all selling functions, are made at the same level of trade as CEP sales.

In addition, the respondent claims that, with respect to U.S. sales from inventory, Filati USA undertakes additional selling functions (*i.e.*, inventory maintenance, addressing of customer complaints, and handling of returns and refunds related to merchandise quality problems) which are excluded from the LOT analysis for the CEP channel, but are performed by Filati for home market sales. Consequently, Filati contends that a CEP offset is warranted because its home market sales are made at a more advanced level of trade than its CEP sales.

According to the petitioner, the Department correctly denied a CEP offset to Filati because Filati failed to develop the record to support its CEP offset claim. Specifically, the petitioner claims that Filati has failed to demonstrate that its level of trade in the home market is different from its level of trade in the United States. The petitioner argues that Filati's claim that a CEP offset is warranted is based solely on the fact that the U.S. subsidiary has involvement in making U.S. sales and on the fact that those sales are determined to be CEP sales. As support for its position, the petitioner cites to the legislative history of the URAA, which emphasizes that CEP offsets are not automatically provided, but rather are granted when respondents demonstrate that certain stated conditions are true.

DOC Position

We agree with the petitioner. In accordance with section 773(a)(7)(B) of the Act, the Department grants a CEP offset where a respondent demonstrates that its home market sales are made at a more advanced state of distribution that its U.S. sales. In this case, we conducted an analysis in order to determine whether Filati's normal values were established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP. *See* the ''Level of Trade and CEP Offset'' section of this notice, above. After performing this analysis, the Department found that Filati performed essentially the same selling functions in its sales offices in Malaysia for both home market and U.S. sales.

We disagree with Filati that this finding is inconsistent with a finding that Filati's U.S. subsidiary performs significant selling functions. We note

that Filati's U.S. sales initially are at a more advanced level of distribution than its home market sales. After the deduction of the selling expenses associated with selling activities occurring in the United States, however, the levels of trade in both markets become the same. At this point, the relevant U.S. transaction becomes the constructed sale between the exporter (*i.e.*, Filati) and the importer (*i.e.*, Filati USA). Consequently, based on the information on the record, we have continued to deny a CEP offset to Filati for these final results.

Comment 3: Offset for Imputed Costs Associated With AD/CVD Duty Deposits

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati concedes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with the recent practice articulated in *AFBs*. However, Filati contends that the Department's change in policy conflicts with prior decisions both by the Department and the CIT. *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 Reviews*, 62 FR 2081, 2104 (Jan. 15, 1997 (*1994–1995 AFBs Reviews*); and *Federal-Mogul* v. *United States*, 950 F. Supp. 1179 (CIT 1996).

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

In addition, Filati contends that the CIT has taken a consistent position which approves of the offset. Filati cites to *Timken Co.* v. *United States*, 16 F. Supp. 2d 1102, 1105 (CIT 1998) (*Timken*), which lists the cases in which the court has upheld the Department's decisions to grant the adjustment and the cases in which it has remanded decisions to deny the offset.

Finally, according to Filati, the Department has correctly held that the costs associated with antidumping or countervailing duty deposits are not ''selling expenses.'' Consequently, Filati maintains that the antidumping law does not allow their deduction from CEP.

Based on the above arguments, Filati contends that the Department should allow its offset to indirect selling expenses for the imputed cost of financing its cash deposits of antidumping and countervailing duties for purposes of the final results.

DOC Position

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

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

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from CEP. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 63860, 63865 (Nov. 17, 1998); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2571 (Jan. 15, 1998); *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18395 (April 15, 1997); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992). We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id.* Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the dumping order.

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

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

Thus, while it is appropriate to exclude from CEP deductions cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this practice to expenses allegedly associated with financing cash deposits. By the same

token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from CEP, we should also not deduct financing expenses that are arbitrarily associated with cash deposits. Our treatment of these financing expenses is consistent with out treatment of other expenses, such as taxes. Although we do not deduct corporate taxes from CEP, we would not reduce selling expenses to reflect financing costs alleged to be associated with payment of such taxes.

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

Regarding Filati's cite to *Timken,* we note that in this decision the CIT acknowledged that it is the Department's current practice to deny the offset to indirect selling expenses for financing cash deposits related to antidumping or countervailing duties. However, the CIT recognized that it has upheld the Department when it has decided to grant the offset to indirect selling expenses. Consistent with the CIT's prior decisions, it sustained the Department's determination to grant the offset. While we concede that *Timken* references a number of cases which were remanded to the Department after denying the offset, we note that these cases were decided according to the Department's prior practice regarding the offset.

Moreover, even were we to reverse our stated practice and allow an offset, we would not do so in this case because Filati did not incur any financing costs in the United States. Further, as we noted above, it would be inappropriate to impute an amount which would be associated with financing cash deposits in theory only, since the record shows that Filati did not finance its cash deposits.

Finally, we disagree with Filati's argument that: it incurred a real expense that it would not have incurred but for the existence of the antidumping duty order. The only expenses relevant to this question are U.S. financing expenses. Because the record shows no evidence of financing activity in the United States, we find that Filati incurred no ''real'' expense, despite its assertions to the contrary.

Therefore, in accordance with our current practice, we have continued to deny an offset to Filati's indirect selling expenses for purposes of the final results.

Comment 4: Foreign Movement Expenses on U.S. Sales

During the POR, Filati sold certain products from its U.S. inventory which were imported prior to the POR. Because Filati did not incur any foreign movement expenses during the POR for these products, Filati based the movement expenses for these products on the average of the expenses incurred for similar products imported during the POR, rather than on the actual expenses incurred. At verification, Filati provided the actual (*i.e.*, pre-POR) movement expenses associated with these sales.

According to Filati, the Department should accept its reported movement expenses, rather than using the pre-POR data obtained at verification. Filati argues that using the reported data is the most reasonable method for Commerce to employ because that methodology uses the data that is most current.

DOC Position

We disagree. It is the Department's preference to use actual data over estimates when calculating price adjustments. The fact that the actual movement expenses in question were incurred prior to the POR makes them neither inaccurate nor unacceptable. Rather, this data is more accurate than the reported data because it represents the amounts that Filati actually incurred to transport the merchandise sold during the POR. Therefore, we have used the actual movement expenses incurred on these sales for purposes of the final results.

Comment 5: Conversion of Movement Charges Into Per-Pound Amounts

Filati asserts that the Department failed to convert certain U.S. movement expenses which were reported on per-kilogram basis to a per-pound basis before performing its margin calculations. Filati argues that the Department should correct this error for purposes of the final results.

DOC Position

We agree. Although Filati stated in its questionnaire response that these expenses were reported on a per-pound basis, we found at verification that they were actually reported as amounts per kilogram. Consequently, we have treated them as such for purposes of the final results.

Comment 6: Inclusion of Uncollected Duties in COP

During the POR, the government of Malaysia allowed Filati to import rubber thread inputs duty free; however, when Filati sold extruded rubber thread in the home market, the government charged it a duty equal to three percent of the sales price. In the preliminary results, the Department treated these amounts as uncollected import duties and added them to the U.S. starting price and to COP.

According to Filati, the Department should not add these uncollected duties to COP because they are not recorded as raw materials costs in Filati's accounting system. Filati notes that section 773(f)(1)(A) of the Act and 19 U.S.C. section 1677b(f)(1)(A) require respondents to base their reported production costs on the actual costs recorded in their normal accounting records.

However, Filati contends that, if the Department finds that Filati's cost of production should be adjusted for these amounts, then: (1) the percentage should be applied only to raw material costs, since the duties are based on imported raw materials only; and (2) the Department should use the weighted-average of the amounts paid during the POR, rather than transaction-specific amounts, since the questionnaire instructs respondents to report costs on a weighted-average basis. Filati notes that the use of POR figures would be consistent with the Department's treatment of these figures in the fourth administrative review of this proceeding.

Although this issue was not raised by Heveafil, we note that it applies to this company as well because Heveafil also paid the same type of duties.

DOC Position

We disagree with Filati, in part. Section 773(f)(1)(A) of the Act requires the Department to depart from the records of the producer if: (1) Those

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

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

However, we agree with Filati that we should use weight-averaged figures when applying the uncollected duty to the COP because we calculate a weight-averaged COP. We have revised our calculations to use weight-averaged amounts for purposes of the final results.

Because Heveafil also reported uncollected duties in its questionnaire response, we have also calculated Heveafil's duties in the same manner.

Comment 7: G&A Expenses of Filati's Parent Company

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

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

DOC Position

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

Comment 8: Offset to Financial Expenses

Filati reported its financing expenses based on the consolidated financial statements of its holding company. Filati offset these expenses with the interest income shown on these financial statements. At verification, Filati was not able to demonstrate that the full amount of this offset was generated from short-term sources. (*See* the Filati cost verification report at page 17.)

Filati argues that the Department should grant the full amount of interest income as an offset to financing expenses because Filati demonstrated at verification that interest income is generated from only two sources, both of which are short-term in nature. In addition, Filati asserts that, should the Department determine that only a partial offset is reasonable, it should: (1) base the offset amount on both short-term deposits and cash-in-bank balances; and (2) use the average balances for these accounts, rather than the year-end balances, because interest is earned over time. In addition, Filati argues that, should the Department exclude short-term deposits from the calculation of the offset, it should use the average of the cash-in-bank balances for 1996 and 1997 for the same reason.

DOC Position

We agree, in part. At verification, Filati was able to demonstrate that one of the two sources mentioned above, cash in bank, generated short-term interest income. Contrary to its assertions, Filati was not able to demonstrate that the other source, short-term deposits, generated any income at all. *See* the Filati cost verification report at page 17. For this reason, we granted a partial offset to financing expenses based on the cash-in-bank balance.

We also agree that it is appropriate to use average balances for 1996 and 1997 in our calculation of the offset. We have calculated the offset accordingly for purposes of the final results.

B. Heveafil

Comment 9: Errors in Heveafil's Sales Responses

According to the petitioner, the Department discovered at verification that Heveafil's home market and U.S. sales data contained significant errors. Specifically, the petitioner claims that Heveafil: (1) reported incorrect dates of shipment and payment for home market sales, resulting in overstated home market credit expenses; (2) reported Malaysian customs duties on home market sales for which there were no duties; and (3) understated a number of adjustments related to U.S. sales. The petitioner asserts that the Department should adjust Heveafil's sales data using facts available in order to ensure that Heveafil's dumping margin is not understated.

Heveafil concedes that the Department found errors at verification but maintains that these errors were small and inadvertent. Heveafil notes that most of the errors in dates of shipment were provided at the beginning of verification and that the Department found only a single instance of overstated customs duties. Regarding the U.S. adjustments referenced by the petitioner, Heveafil asserts that the Department found the reported data to be incorrect in only five instances and that some of these errors were not in Heveafil's favor. Therefore, Heveafil asserts that the Department should accept the corrections provided at verification, rather than applying facts available.

DOC Position

We agree with Heveafil. The errors in question were neither significant nor pervasive. Because it is the Department's practice to accept minor corrections at verification, we have accepted these corrections for purposes of the final results.

Comment 10: Errors in Heveafil's Cost Responses

According to the petitioner, the Department discovered at verification that Heveafil misreported its costs. Specifically, the petitioner claims that Heveafil understated certain material costs, misstated yield rates, and misclassified certain variable overhead costs as fixed. The petitioner asserts that the Department should correct these problems by applying adverse inferences.

Heveafil disagrees, stating that its cost response is accurate and acceptable. According to Heveafil, the Department found at verification that Heveafil actually overstated its total costs. Heveafil notes that its costs would be understated only if the Department were to correct them for errors found at verification (*e.g.*, the double-counting of certain variable overhead expenses, etc.).

Regarding its yield rates, Heveafil maintains that these rates were correct and reconcilable to the standard yield rates used in the normal course of the

company's business. Heveafil argues that standard yields, by definition, differ from actual yields due to factors such as downtime. Heveafil asserts that, because it accounted for the differences between its standard and actual yields through the application of a variance, the Department should accept its yields as reported.

Finally, Heveafil maintains that its classification of its overhead expenses as variable or fixed in this administrative review is consistent with its classification of these expenses in previous administrative reviews. Heveafil asserts that, if the Department disagrees with Heveafil's classification, it should reclassify these expenses rather than reject them in their entirety.

DOC Position

We agree with Heveafil, in part. Although we found at verification that the manufacturing costs in Heveafil's questionnaire response contained certain errors, we noted that these errors generally resulted in the overstatement of the company's costs. Moreover, we find that none of these errors was so significant as to warrant the rejection of Heveafil's data. Consequently, we have continued to rely on it for purposes of the final results.

In general, when the Department deems a respondent's data to be acceptable, our practice has been to correct it for errors found at verification. However, we have not done so in this case (except as noted below), because: (1) although Heveafil was able to identify the total amount of certain errors at verification, it was unable to provide corrections on a product-specific level; and (2) correcting only some errors without correcting others would result in a net understatement of Heveafil's COM.

Regarding the issue of whether Heveafil misclassified certain fixed overhead costs as variable, we agree with the petitioner. Because we can reclassify these costs as fixed overhead without changing the total COM reported, we have done so for purposes of the final results.

Finally, we have corrected two additional errors found at verification which are unrelated to the items noted above. First, we found that the standard material costs were understated for one product. Consequently, we have increased the material costs reported for this product by the percentage by which the reported costs differed from the correct standard costs, as facts available. We also revised Heveafil's reported financing expenses, in order to: (1) Include an amount for foreign exchange losses related to accounts payable transactions during the POR; and (2) exclude an amount for bank charges which had also been reported as selling expenses.

C. Rubberflex

Comment 11: Calculation of U.S. Indirect Selling Expenses

The petitioner argues that Rubberflex understated the indirect selling expenses of its U.S. subsidiary, Flexfil, because it allocated a certain portion of these expenses to Canadian sales which were not invoiced by Flexfil. According to the petitioner, the Department should reallocate these expenses using only the sales made by the subsidiary and recorded in the subsidiary's books. In support of its position, the petitioner cites to the *Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Pipes from Taiwan*, 57 FR 53705, 53718 (Nov. 12, 1992) (*WSSP from Taiwan*), where the Department found that the indirect selling expenses of a U.S. subsidiary may not be allocated over sales which do not appear on its books.

Rubberflex contends that it properly allocated the indirect selling expenses in question. Rubberflex notes that Flexfil is actively involved in making Canadian sales, because Flexfil conducts all activities associated with procuring, maintaining, and servicing Rubberflex's Canadian accounts. Rubberflex asserts that the only difference between Flexfil's role in making Canadian and U.S. sales is in the area of billing; there, Rubberflex invoices the Canadian customers directly, whereas Flexfil invoices its U.S. customers. According to Rubberflex, this difference exists so that Rubberflex can take advantage of certain financing options in Malaysia that would not be available were Flexfil the purchaser of record.

Rubberflex argues that this case is distinguishable from *WSSP from Taiwan*, in that the respondent in that case only maintained correspondence records related to its off-the-books sales. Rubberflex contends that Flexfil's involvement meets a much higher standard, as noted above. For this reason, Rubberflex asserts that Flexfil's indirect selling expenses were appropriately allocated to Canadian sales.

DOC Position

We agree with Rubberflex. At verification, we confirmed that Flexfil was actively involved in making sales to Canada. Therefore, because the indirect selling expenses incurred by Flexfil related, in part, to sales to Canada, we find that it is appropriate to allocate a portion of these expenses to Canadian sales. Accordingly, we have accepted Flexfil's indirect selling expenses for purposes of the final results.

Comment 12: Calculation of the Cost of Production

According to the petitioner, the Department found at verification that Rubberflex understated its production costs. Specifically, the petitioner maintains that Rubberflex failed to include in its costs: (1) certain year-end adjustments related to the POR; and (2) bank charges. The petitioner asserts that the Department should increase the costs reported by the amounts found at verification.

Rubberflex states that it defers to the Department's judgement on this issue.

DOC Position

We agree with the petitioner, in part. We have increased the costs reported by Rubberflex to incorporate the portion of the year-end adjustments related to the POR, based on our findings at verification. We have made no additional adjustment to Rubberflex's costs for bank charges, however, because Rubberflex correctly included the amount of these charges in the indirect selling expenses reported in its most recent home market sales listing.

Final Results of Review

As a result of comments received we have revised our analysis and determine that the following margins exist for the period October 1, 1996, through September 30, 1997:

Manufacturer/exporter	Percent margin
Filati Lastex Elastofibre (Malaysia)	2.07
Heveafil Sdn. Bhd./Filmax Sdn. Bhd.	4.78
Rubberflex Sdn. Bhd	1.22
Rubfil Sdn. Bhd	54.31

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. These rates will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn

from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

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

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

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6280 Filed 3–15–99; 8:45 am]

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DEPARTMENT OF COMMERCE

[A–570–848]

International Trade Administration

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Preliminary Results of a New-Shipper Antidumping Review

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

ACTION: Notice of extension of time limits for preliminary results of a new-shipper antidumping duty review.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0648 and (202) 482–4236, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are 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 to 19 CFR part 351 (1998).

Extension of Time Limits for Preliminary Results

On September 30, 1998, the Department of Commerce received a request from Yancheng Baolong Biochemical Products Co., Ltd. to conduct a new-shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On October 30, 1998 (63 FR 59762 published November 5, 1998), the Department initiated this new-shipper antidumping review covering the period March 26, 1997 through August 31, 1998.

The Department has determined that it is not practicable to complete this review within the time limits mandated by section 751(a)(2)(B) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to July 17, 1999. This extension of time limits is in accordance with section 751(a)(2)(B) of the Act.

Dated: March 5, 1999.

Joseph A Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part

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

ACTION: Notice of final results of administrative review and determination not to revoke order in part.

SUMMARY: On May 12, 1998, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada and its notice of intent not to revoke the order with respect to pure magnesium produced by Norsk Hydro Canada Inc. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

This review covers one producer/exporter of pure magnesium to the United States during the period August 1, 1996, through July 31, 1997. The review indicates no dumping margins during the review period.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Stephanie Hoffman, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0189 or 482–4198, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (''the Department'') is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930 (''the Act''), as amended. 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 Act