hereby requested. Failure to comply is with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22).

Dated: March 9, 1988.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6883 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

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

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

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

SUMMARY: On September 9, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. We also issued a supplemental questionnaire on December 18, 1997, on the issues of reimbursement and level of trade. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

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

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the **Federal Register** (62 FR 47418) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993), as amended pursuant to Court of International Trade (CIT) decision (61 FR 47871, September 11, 1996). On December 5, 1997, the Department published in the **Federal Register** (62 FR 64354) a notice of extension of the time limit for completion of this review until March 9, 1998. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Scope of This Review

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

The POR is August 1, 1995, through July 31, 1996. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

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

Comment 1: Petitioners argue that Hoogovens failed to segregate properly its warranty and technical service expenses into direct and indirect portions, as required under the law. Where a respondent fails to report warranty and technical service expenses in direct and indirect components, petitioners claim that the Department's practice is to treat the expenses as direct in the U.S. market, and to deny any adjustment in the home market. According to petitioners, the CIT has upheld this policy on several occasions. See *RHP Bearings* v. *United States*, 875 F. Supp. 854, 859 (CIT 1995).

Petitioners argue that the three categories of warranty and technical service expenses Hoogovens identified and reported as part of indirect selling expenses (the amount of credit notes issued to customers to satisfy claims of defective merchandise, the cost of returned merchandise, and travel

expenses of Quality Assurance personnel) are direct expenses, as they are variable expenses incurred as a direct and unavoidable consequence of sales, and vary with the quantity sold. Although Hoogovens claims that it cannot tie these expenses to particular sales, petitioners argue this does not excuse its improper reporting. According to petitioners, the Court of Appeals for the Federal Circuit held in *Torrington Co.* v. *United States*, 82 F.3d at 1051 (Fed.Cir. 1996), that the respondent's method of allocating or recording expenses does not alter the relationship of the expenses to the sales under consideration, and that its failure to keep adequate records does not justify treatment of direct expenses as indirect.

Hoogovens argues that the Department verified and accepted the manner in which it maintains these expenses in its accounting records and the methodology Hoogovens adopted to report these expenses in the investigation, the two previous reviews and the preliminary results of this review. Further, Hoogovens claims that the Department frequently treats warranty and technical service expenses as indirect, citing *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, 2097 (January 15, 1997) (''AFBs 1997''). Hoogovens points out that warranty and technical service expenses incurred during the POR frequently relate to sales made before the POR. Accordingly, Hoogovens argues it is not possible for respondents to tie warranty expenses incurred during the POR to specific sales made during the POR, and therefore the Department's long-standing practice is to require respondents to report the warranty and technical service expenses actually incurred during the POR, regardless of when the sales were made. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11839 (March 13, 1997). Hoogovens argues that its warranty and technical service expenses are primarily claims for damaged merchandise, and that these expenses are not analogous to the types of expenses the Department generally considers to be variable and/or associated with particular sales, *i.e.*, post-sale price adjustments, rebates and discounts. Moreover, Hoogovens claims its historical experience shows there is no direct relationship between its warranty expenses and the total quantity of sales. Therefore, Hoogovens urges the Department to reject petitioners' argument and continue its practice of treating Hoogovens' warranty and technical service expenses as indirect selling expenses in both the U.S. and home markets.

Department's Position: We agree with petitioners that Hoogovens' warranty and technical service expenses should be considered as direct expenses. Contrary to Hoogovens' claim that it has reported these expenses as indirect selling expenses (ISE) in both of the previous reviews, in the first administrative review it reported them separately as direct warranty expenses allocated to subject merchandise on the basis of tonnage sold. There has been no change since then in the manner in which Hoogovens records these expenses in its accounting system, and Hoogovens did not explain why it reported them differently in the second and third reviews. The Department verified Hoogovens' worksheets for calculating U.S. warranty expenses in this review, in which it reported expenses on warranty claims and travel expenses of Quality Assurance personnel for subject merchandise. For home market warranty expenses, Hoogovens reported expenses on claims, returned/rejected material, and travel expenses for the home market reporting period of December 1993 through September 1996, and calculated the total warranty expenses as a percentage of sales.

As noted in AFBs 1997, the Department has long recognized that warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary. Although Hoogovens cites AFBs 1997 as supporting its treatment of warranty and technical service expenses as indirect, the relevant comment makes clear that the expenses the Department allowed as indirect were fixed expenses for salaries, benefits, rent, utilities and depreciation, rather than the variable warranty expenses reported in this case. Accordingly, for the final results of this review, we have calculated warranty expenses as a separate direct variable expense in both the U.S. and home markets and deducted them from the reported ISE in the respective markets. We allocated the expense to the metric tonnage sold, rather than gross price, to avoid the distorting effects of dumping prices in the U.S. market and of different terms of sale in the home market. As Hoogovens reported these expenses, we disagree with petitioners' argument that we should invoke adverse facts available and penalize Hoogovens by denying an adjustment to normal value (NV).

Comment 2: Petitioners argue that the Department should match Hoogovens' sales by level of trade (LOT) on the grounds that in the second review, Hoogovens initially claimed that it provided much greater sales support to its end-user customers than to service centers, but later reversed itself. Petitioners cite the statute's requirement that an adjustment to NV be made where a difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of persistent price differences between sales at different LOTs in the country in which NV is determined. Petitioners also cite the Department's regulations providing that the Secretary shall determine that sales are made at different LOTs if they are made at different marketing stages.

Petitioners argue that Hoogovens' end-user and service center customers are at different phases of marketing. In the second review, Hoogovens stated that steel service centers sell subject merchandise to the same types of end-user customers as Hoogovens, and concluded that end-user customers are further removed from Hoogovens' factory than the service centers. In this review, Hoogovens explained that its products are incorporated into the merchandise manufactured by the end-user customers, and that service centers function as distributors, who purchase steel from Hoogovens, and after slitting, rolling and/or cutting to length, sell essentially the same product to end-user customers.

Petitioners note that in the final results of the second review, the Department agreed with petitioners that end-users and service centers/distributors constitute different phases of marketing. *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 62 FR 18476, 18480 (April 15, 1997). Petitioners argue that information on the record in this review supports the same finding: Hoogovens' product brochure states that Hoogovens advises its customers regarding the best processing options; in describing the company's research activities, the brochure states that car manufacturers involve Hoogovens in the design of new cars, and that Hoogovens advises manufacturers on which steel types and qualities are best for their production process. Section A Response at Exhibit A–14, pp. 10–11 (Public Version).

Petitioners point out that Hoogovens claimed in this review that it is frequently aware of the nature of the product required by the end-user customers of its service center customers, and those downstream customers' processing capabilities, in order to provide the correct quality of steel. On this basis, Hoogovens claimed that it must supply the same support functions to service centers as to end-user customers. However, petitioners note, in the second review Hoogovens stated that steel service centers purchase steel from Hoogovens without having identified an end-user customer at the time of purchase. Hoogovens also stated that it provides far greater sales assistance to its end-user customers than to its service center customers, because the service centers do not know the ultimate use of the product at the time of purchase from Hoogovens. Petitioners point out that Hoogovens has not described any changes in the function or business of its service center customers that would explain these contradictory statements.

Petitioners argue that the Department should not assume from a respondent's failure to come forward with detailed information that there are no differences in selling functions, because it may be in the respondent's interest to refrain from claiming a LOT adjustment.

Hoogovens denies that respondents who do not claim different LOTs have a burden to prove the negative, *i.e.*, that no different LOTs exist. According to Hoogovens, the Department's practice is to verify the submitted data to ensure that respondent's position accurately reflects its sales practices. In the current review, Hoogovens argues, the Department asked extensive supplemental questions on the LOT issue, to which Hoogovens responded fully, and which the Department verified. Hoogovens claims that in virtually every other steel case in which the issue has arisen, the Department has concluded that the respondent's sales to end-users and steel service centers have been made at the same LOT.

According to Hoogovens, petitioners' entire LOT argument appears to be based on the facts of the second administrative review, rather than on the evidence on the record in this review. However, Hoogovens points out, petitioners fail to note that the Department concluded that Hoogovens export price (EP) sales and home market sales were made at a single LOT. The Department has consistently found in steel cases that sales to end-users and service centers, while representing sales at different phases of marketing, are not at different LOTs.

Hoogovens argues that petitioners' quotations from Hoogovens' product brochures are irrelevant on the grounds that advertising brochures are general descriptions of a company's operations and cannot constitute persuasive evidence of actual selling functions performed for different customers. According to Hoogovens, petitioners' arguments regarding different LOTs are almost entirely focused on alleged different selling functions performed by Hoogovens for automotive customers, rather than on differences between other end-users and service centers. Petitioners omit that the functions performed for automotive customers are also described in the brochures as available for other customers. Product/market development employees are described as working closely with sales teams, product line employees and R&D to deliver the best possible product without regard to customer category. Hoogovens claims this is consistent with its statement in its Supplemental Response (January 24, 1997, at 7) that ''it is increasingly important for Hoogovens to provide as much product development assistance as possible to its steel service center customers to enable the service centers to maintain their relationships with their end-user customers.''

Petitioners also argue that there are price differences by LOT. According to Hoogovens, the Department has consistently held that price differences are, by themselves, not sufficient to justify a finding of different LOTs. Hoogovens cites AFBs 1997, 62 FR at 2109, where the Department stated: ''In any event, differences in prices do not determine the existence of levels of trade.'' Hoogovens further argues that as petitioners have allegedly failed to establish that there are different LOTs based on Hoogovens' selling functions, the Department need not consider the relevance of differences in price levels. Moreover, Hoogovens points out that petitioners have not argued that there is any consistent pattern of price differences on Hoogovens reported EP sales. Hoogovens therefore concludes that petitioners' arguments cannot sustain a finding that there are different LOTs in the U.S. market. Further, to the extent that petitioners are arguing that there is one LOT in the U.S. market and two LOTs in the home market, Hoogovens points out that petitioners have not explained to which alleged home market LOT the U.S. LOT should be matched, or how the Department should make any LOT adjustment between the U.S. LOT and either of the two alleged home market LOTs.

In its January 16, 1998, response to a supplemental questionnaire issued by the Department, Hoogovens reiterated prior claims that it provides services based on the ultimate end use of the product rather than the identity or category of the customer, and that it provides the same services to all customers in the home market. Hoogovens maintains that it is frequently aware of the nature of the end-use for which its products are required. Hoogovens also provided examples of its product development activities.

Petitioners commented on this response on January 30, 1998. Petitioners continue to argue that Hoogovens failed to substantiate its allegation that all of its customers were at the same LOT. Petitioners claim that Hoogovens' response consists of vague, unsupported assertions, tallies of customer visits and a small selection of customer visit reports that were chosen by Hoogovens to support its claim.

Department's Position: Under the URAA, a level of trade adjustment can increase or decrease normal value. SAA at 159. Accordingly, the SAA directs Commerce to ''require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade.'' *Id.* (Emphasis added). See also Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 47446, 47450 (September 9, 1997). Thus, to properly establish the LOT of the relevant sales, Commerce specifically requests LOT information in every antidumping proceeding conducted under the URAA, regardless of whether a respondent sells solely to one nominal customer category, such as service centers or end-users. Moreover, consistent with that approach, we note that of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. Respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different.

As a matter of policy, the Department cannot allow respondents to form their own conclusions on LOT and then submit the data to support their conclusions. Rather, it is the Department's responsibility, not respondent's, to determine LOTs. It is

not that respondents have the burden to ''prove the negative,'' as Hoogovens states, but that respondents have a burden to demonstrate that there is only one LOT. We make no presumption as to the number of LOTs in a market. Rather, the respondent must provide information which satisfactorily demonstrates what LOTs exist. Respondent's failure in this case to provide detailed LOT information leads the Department to conclude that it has not met its burden of proof to demonstrate that there is in fact only one LOT, particularly in light of other information indicating the existence of two LOTs.

To make a proper determination as to whether home market sales are at a different LOT than U.S. sales, the Department examines whether the home market sales are at different stages in the marketing process than the U.S. sales. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed LOTs based on customer classifications. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT. Different LOTs are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different LOT, we make a level-of-trade adjustment if the difference in LOT affects price comparability. We determine any effect on price comparability by examining sales at different LOTs in a single market, the home market. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different LOTs. We use the average difference in net prices to adjust the NV when it is based on a LOT different from that of the export sale. If there is a pattern of no price differences, then the difference in LOT does not have a price effect, and no adjustment is necessary.

As stated above, the Department begins its LOT analysis with an examination of the different distribution systems, or channels of trade. Normally, transactions at different LOTs occur at different points in the distribution system, which is reflected in the commercial designation of customer categories, such as distributor or service center, and the selling functions that support such commercial designations. In the present case, Hoogovens sold to end-users and service centers in both the U.S. and home markets. It is undisputed that these transactions constitute sales through different channels of trade.

With respect to the selling functions performed, we conducted a comprehensive examination of the available information provided by Hoogovens in this case. The Department requested information on selling functions in the original questionnaire and two supplemental questionnaires. Based upon the information submitted on the record, we are unable to determine conclusively whether the specific selling functions performed by Hoogovens with respect to sales to the service centers and end-users reflect sales at the same LOT.

In this review, Hoogovens has repeatedly claimed that it provides the same technical and warranty services to all customers in all markets. *See e.g.,* January 24, 1997 response at 7. However, as the Department has stated, different LOTs may be established where a respondent performs functions that are the same with respect to all markets and all customers, as Hoogovens claims in this case. The critical element in such a case is the degree to which the selling functions are performed.

Significantly, on this important issue, Hoogovens stated in the previous review that ''increased quality assurance and product development assistance'' may be the basis for treatment of end-user sales and service center sales as different LOTs. January 24, 1997 response at 12–13 (citing to its Section A response in the 1994–95 review). In this review, Hoogovens claims that the quantitative aspect of the selling functions performed varies only by customer, not customer category. Hoogovens also states that the services performed vary based upon the end-use of the product, but that performance of the same services does not vary by customer category. *Id. at 11.*

The statements and evidence Hoogovens has elected to place on the record indicate an ability to isolate data on selling functions and determine how they vary in kind and degree by customer category or end-use. Despite that apparent ability, Hoogovens declined to provide all of the detailed information which the Department requested for purposes of conducting a LOT analysis. As noted above, respondent's failure to provide detailed LOT information has left the Department with an inadequate record on this issue. For example, the Department specifically requested that Hoogovens ''describe in detail the nature and extent of the selling functions performed.'' January 24, 1997 response at 9. The Department required that ''[f]or each selling function, describe in detail whether it is performed to a greater degree, or in a different manner, depending on customer type.'' *Id.* By its own admission, Hoogovens performed varying levels of technical and quality assurance assistance. Nevertheless, Hoogovens did not provide the information necessary for the Department to make a proper evaluation of LOT and assess the assertions made by Hoogovens. Because Hoogovens has not provided an adequate explanation of the services it performs, nor demonstrated that variations in services supplied are not related to customer category, the Department is unable to assess the validity of Hoogovens' claim that it performs the same services for all customers in all markets.

Furthermore, other evidence on the record suggests that there are different selling functions performed based on customer category in this case. For example, while Hoogovens claims to provide the same support to all customers, it acknowledges that one large service center customer in the home market has itself received several important quality certifications in the automotive and other industries. Hoogovens claims that these certifications require assurance of chemical and mechanical properties. However, other information on the record shows that this customer also provides special delivery services, as well as further manufacturing. In addition, this customer itself guarantees the quality of its products and has a metallurgist on its staff. All of this suggests that there is less need for Hoogovens to provide technical support services to this service center and its customers than to Hoogovens' own end-user customers. Further, despite our requests, Hoogovens did not provide any detailed analysis or description of the precise nature of product research and technical support Hoogovens provides to various customers and amount of expenses incurred.

Further, Hoogovens' responses appear contradictory. Hoogovens claims that its quality assurance department has the same representatives assigned to all home market customers. *See* January 16, 1998 submission at 19. But Hoogovens also states that quality assurance representatives are assigned on the basis of the ultimate application of the

product. *Id.* The Department is unable to determine how these representatives are assigned and whether their assignments reflect a greater level of technical and quality assurance assistance to end-users and whether greater expenses are incurred for either service centers or end-users. Moreover, Hoogovens has stated (1) that service centers frequently do not know the end-use of the product at the time of purchase from Hoogovens and (2) that service centers assume the risk of finding a customer for the material. *See* January 24, 1997 submission at 14. These statements demonstrate that Hoogovens frequently does not know the identity of the service center's customer and thus cannot provide technical services in support of such sales. Rather, these statements support Hoogovens' earlier position that it provides far greater sales assistance to end-user customers than to its service center customers.

Finally, we find the evidence concerning the number of visits to customers and the meetings with customers to be unpersuasive. The number of visits is not a useful tool for examination. In some instances, Hoogovens has common customers with service centers, thereby confusing the issue of whether the visit relates to products purchased from Hoogovens or from the service center. Second, the evidence on meetings with customers submitted by Hoogovens does not establish that technical services and quality assurance assistance are ''the same for all customers.'' A comparison of the selling functions performed based upon a full description of such functions is necessary for the Department to make that conclusion. Further, the limited number of reports relative to the size of the customer base does not provide an adequate reflection of the circumstances in this case and cannot substitute for the description of the selling functions requested by the Department. Thus, Hoogovens has failed to meet its burden of proof establishing that there is only one LOT in the home market.

In sum, the evidence on the record demonstrates that, both in the home market and in the United States, sales occur at two different stages in the marketing process and to two different customer categories (*i.e.*, service centers and end-users). Significantly in this case, the Department has also determined that a pattern of consistent price differences exists with respect to sales occurring at these two different stages of marketing in the home market. In fact, Hoogovens has acknowledged that one primary factor governing prices charged to end-users and service centers is the ''historic commercial reasons related to the relative functions of service centers and end-users.'' January 24, 1997 submission at 13. Therefore, on the basis of the facts available, we are treating EP and home market sales to end-users as a different LOT than home market sales to service centers. Further, since the basis for distinguishing LOT is the provision of technical and warranty services, and the LOT of the CEP sales is the LOT of the affiliated service centers, we are treating all CEP sales as sales to service centers and this LOT as equivalent to the home market service center LOT. Where it is not possible to match a U.S. sale to a home market sale at the same LOT, we have made a LOT adjustment based on our comparison of the weighted-average net prices, by product, of merchandise sold in the home market to service centers to the weighted-average net prices, by product, of merchandise sold to end-users. When a U.S. sale to an end-user is compared to a home market sale to a service center, the NV is adjusted upward; conversely, when a U.S. sale to a service center is compared to a home market sale to an end-user, the NV is adjusted downward. The CEP offset issue is addressed in the following comment.

Comment 3: Hoogovens argues that in the preliminary results the Department improperly failed to make a CEP offset adjustment to NV pursuant to section 773 (a)(7)(B) of the Act when comparing Hoogovens' reported CEP sales to NV, and that this failure was based on a misunderstanding of the facts of this review and on a misinterpretation of both the statute and the Department's current practice.

As the Department explained in the preliminary results, in identifying the LOT for CEP sales, its current policy is to consider only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act. 62 FR 47421. In comparing the CEP LOT to home market sales, the Department considers the selling functions reflected in the starting price of the home market sales before any adjustments. According to Hoogovens, the Department makes a CEP offset when it finds after this comparison that the unadjusted home market price is at a more advanced LOT than the adjusted CEP.

Hoogovens argues that the Department's conclusion in the preliminary results that there were no differences between the adjusted CEP and the unadjusted home market price is not supported by the facts. 62 FR 47421. Hoogovens claims that in this case, this comparison ''necessarily results in a comparison of sales at different levels of trade,'' because the starting price of the home market sales includes ''many selling activities not reflected in the adjusted CEP price.'' These include indirect selling activities, indirect warranty and technical service expenses, and freight and delivery arrangements. All of these types of expenses, incurred both in the Netherlands and the United States, have been deducted from the net CEP used to establish the LOT for CEP sales. Hoogovens concludes that the home market LOT must be deemed to be a different, more advanced LOT than the adjusted CEP LOT. Case Brief at 10.

Hoogovens further argues that there were no sales in the home market at a LOT equivalent to the CEP LOT, and that all sales in the home market were at the same LOT. Hoogovens concludes that in the absence of data to quantify a LOT adjustment to account for the difference between the CEP LOT and the home market LOT, the Department should make a CEP offset adjustment to NV. Case Brief at 11.

Petitioners argue that the Department properly denied a CEP offset adjustment, inasmuch as Hoogovens has failed to provide information in the current review that would allow the Department to determine what selling functions are reflected in the price of either home market sales or the adjusted CEP. The Department's questionnaire instructed Hoogovens to provide a chart showing all selling functions provided for each customer category, and a list separately reporting those expenses deducted from U.S. price, with a narrative explanation detailing each selling function noted within each customer group. Questionnaire at Addendum I (Question 9.B.). Hoogovens failed to provide any chart regarding CEP sales, or any list or meaningful narrative separately detailing the expenses and selling functions deducted from U.S. price. See Section A Response at 20 (Public Version). Petitioners argue further that Hoogovens also failed to provide any meaningful analysis of whether its selling functions performed in the Netherlands for its U.S. sales were associated with economic activities in the United States, whether these functions related to the sale to the unaffiliated customer, and whether the expenses associated with these functions should be deducted from CEP. Petitioners therefore conclude that the Department has no basis to determine that there is a distinct CEP LOT.

Petitioners further comment that none of the three selling activities cited by Hoogovens, *i.e.*, indirect selling activities, indirect warranty and

technical service expenses, and freight and delivery arrangements, provides any basis for treating the CEP as a distinct LOT. In the first place, petitioners point out, the Department did not deduct ''indirect selling activities'' incurred in the Netherlands from CEP. See Preliminary Results, 62 FR at 47419. This was one of the reasons the Department did not allow an offset in the preliminary results—namely, because of its finding that the indirect selling functions incurred at the sales office in IJmuiden were common to both the adjusted CEP and the home market price.

Second, petitioners continue, Hoogovens' warranty and technical service expenses are not properly considered as indirect expenses at all. Accordingly, the Department may choose to account for such expenses under the circumstance of sale provision, in which case they are not removed from the adjusted CEP for purposes of the LOT analysis. Even if they are removed from the adjusted CEP, petitioners point out that Hoogovens has not shown that the significance of these functions would justify a finding of different LOTs.

Finally, petitioners argue, costs and expenses associated with freight and delivery are not deducted under section 772(d) and thus are not removed from the adjusted CEP for purposes of the LOT analysis. Neither are they removed from the home market price for purposes of that analysis. See the Department's regulations, 62 FR at 27370; 19 U.S.C. § 1677b(a)(6). Petitioners conclude that Hoogovens' assertion that these expenses are reflected in the home market starting price but deducted from the adjusted CEP is therefore false; on the contrary, such expenses are common to both the adjusted CEP and the starting price in the home market, and provide no basis for a CEP offset adjustment.

Department's Position: Section 773(a)(7)(B) of the Act provides for a CEP offset when: (1) NV is determined at a different LOT than the CEP LOT; and (2) the data available do not provide an appropriate basis for quantifying the amount of a LOT adjustment. Section 351.412(f)(1) of the Department's new regulations (62 FR 27296; May 19, 1997) provides that the Department will grant a CEP offset only where NV is determined at a more advanced LOT than the CEP LOT, and despite the fact that respondent has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. ''More advanced LOT'' refers to a more advanced stage of marketing, which generally means that the home market LOT is more remote from the factory door than the CEP LOT. A more advanced, or remote, LOT is typically characterized by more selling activities and greater selling expenses.

Section 773(a)(7)(B) of the Act defines the CEP offset as the amount of ISE included in NV, up to the amount of ISE deducted in calculating the CEP. ISE in the CEP offset are selling expenses, other than direct selling expenses or assumed expenses, that the seller would incur regardless of whether particular sales were made, but that are attributable, in whole or in part, to such sales.

We adjusted the starting prices of the affiliated service center's sales to their first unaffiliated customers by deducting U.S. selling expenses, costs of further manufacturing and an amount for profits, which yields an estimate of the prices Hoogovens would have charged the service centers if they were not affiliated.

Hoogovens has suggested that the CEP is in effect an ex-factory transfer price to its U.S. affiliate. This is an inaccurate characterization for several reasons. First, transfer prices do not enter into our analysis because the CEP is a calculated price derived from the price to the first unaffiliated customer in the United States. Second, the deductions we make under section 772(d) of the Act do not include all possible direct and indirect selling expenses. These deductions remove only expenses associated with economic activities in the United States that support the U.S. resale. The CEP is not a price exclusive of all selling expenses because it contains the same type of selling expenses as a directly observed export price. Accordingly, the Department's new regulations clearly direct us not to deduct from the starting price any expense ''related solely to the sale to an affiliated importer in the United States,'' *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate. 19 CFR 351.402. We may, however, make a circumstances of sale adjustment to normal value for such expenses, if they are direct expenses, under section 773(a)(6)(C)(iii) of the Act.

Petitioners correctly observe that Hoogovens did not answer the Department's questions on LOT with regard to CEP sales, and did not provide an analysis of selling functions associated with CEP sales, nor show how they differ from home market sales. Consequently, the Department has based its analysis in the final results on the facts otherwise on the record in this review.

In calculating CEP, the Department deducted the imputed credit expenses incurred by the Rafferty-Brown companies as direct selling expenses. Hoogovens' affiliated companies did not report any warranty or technical service expenses for the U.S. resales, and we did not deduct any allocated warranty expenses incurred in the Netherlands for sales to the Rafferty-Brown companies. In accordance with section 772(d)(1), the Department deducted ISE and imputed inventory carrying costs (''ICC'') incurred in the United States by the Rafferty-Brown companies for sales to the first unaffiliated buyers to arrive at the CEP. For the final results of this review, the Department did not deduct ISE and ICC incurred in the Netherlands, nor expenses of the U.S. sales office from the adjusted CEP on the grounds that these are expenses associated with the sale to Hoogovens' U.S. affiliates, rather than with the sales by the affiliates to the first unaffiliated buyers. Thus, the CEP includes Hoogovens' warranty and technical service expenses for U.S. sales, as well as ISE, including the expenses of the sales offices in IJmuiden and New York, and ICC incurred in connection with the sale to the affiliated service center.

Hoogovens' starting price for home market sales includes direct warranty and technical service expenses, ICC, the expenses of the sales office in IJmuiden, and other indirect selling expenses incurred for home market sales. Thus, for the purposes of the LOT analysis, there is no distinguishable difference between the selling functions included in the home market starting price and the selling functions included in the CEP. On the basis of this analysis, the Department has determined that there is no basis for Hoogovens' claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. When a CEP sale could not be matched to a home market sale to a service center, we made a LOT adjustment. Therefore, the issue of a CEP offset is moot.

Comment 4: Hoogovens claims that the Department's decision in the preliminary results to deny an offset to the reported U.S. ISE for the cost of financing cash deposits of estimated antidumping duties during the POR is incorrect, and that the Department should continue to grant this adjustment for the reasons stated in the bearings determinations. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty

Administrative Reviews and Termination in Part, 62 FR 11825, 11826–30 (March 13, 1997).

Hoogovens cities the preliminary results of this review, in which the Department stated that there may not be opportunity costs associated with paying cash deposits and that some respondents may not require loans to cover deposits. 62 FR at 47419 (September 9, 1997). Under this rationale, according to Hoogovens, the Department should not make adjustments for the opportunity costs of carrying either inventory or credit. Hoogovens argues that the opportunity cost of tying considerable sums up as cash deposits exists regardless of whether a loan must be obtained to cover the cost.

Petitioners urge the Department to adhere to its decision to deny this adjustment, supporting the Department's arguments that it is unclear that opportunity costs are incurred, given the fungibility of money, and that borrowing funds for one activity may simply mean that funds need not be borrowed for another activity. Petitioners argue that the difficulty in determining whether such opportunity costs exist, how such costs (if any) should be quantified, and whether such costs are appropriately accounted for in the calculation of ISE, makes an adjustment inappropriate. Petitioners contend that the Department has a longstanding policy of not making an adjustment to account for the time value of every deduction from sales price, such as freight charges, rebates, *etc.* Similarly, petitioners deduce, the multitude of arrangements whereby cash deposits are paid would make an inquiry into opportunity costs associated with such deposits extraordinarily complicated and in all likelihood inaccurate.

Petitioners further argue that the obligation to pay cash deposits arises only where a respondent has engaged in unfair trade activity in the United States, something that is within the respondent's control. Moreover, under the statute, interest accrues only for any overpayment or underpayment of cash deposits, meaning that the importer does not receive interest for the amount of its deposits that reflect the duty finally determined. As such, petitioners argue, the payment of cash deposits cannot be seen merely as an expense incident to an antidumping proceeding, such as lawyers' fees; rather, such payment reflects a current obligation resulting from a respondent's unfair trading activity in the United States. In petitioners' view, allowing a respondent to reap a benefit in its margin calculation based on payment of such deposits would be inconsistent with the fundamental goal of the statute—*i.e.*, to discourage unfair trade and provide a level playing field on which domestic producers can compete.

According to petitioners, the facts of the present case demonstrate why an adjustment for interest in financing cash deposits is inappropriate: Hoogovens has sought to reduce the ISE of the Rafferty-Brown companies (Hoogovens' affiliated U.S. service centers) based on ''imputed'' interest in financing cash deposits, notwithstanding the fact that neither company ever paid any cash deposits. In fact, petitioners point out, Hoogovens acknowledged that ''HSUSA, as sales agent and importer of record for Hoogovens' sales, paid cash deposits on entries for sales during the period of review, using funds transferred periodically by HSBV to HSUSA for that purpose.'' Hoogovens' Response to the Department's Supplemental Questionnaire (Public Version, June 26, 1997 at 1).

Petitioners argue that the Rafferty-Brown companies incurred no expenses, imputed or otherwise, related to the payment of cash deposits, and there is no basis in fact or logic for making any adjustment to their ISE. Petitioners conclude that Hoogovens' claim points to a fundamental defect in the Department's past practice: parties could claim adjustments without any showing that they incurred opportunity costs, that such costs have any relationship to their reported ISE, or how such costs may be quantified.

Department's Position: We agree with petitioners that we should deny an adjustment to Hoogovens' U.S. ISE for expenses which Hoogoven's claims are related to the financing of cash deposits. The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress 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, allowed deductions of such expenses in past reviews of the orders on AFBs. However, we have reconsidered our position on this matter and have concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992). Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. As we stated in the preliminary results: ''money is fungible within a corporate entity. Thus, if an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost.'' See *Preliminary Results* at 47,419. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were inevitable.

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 at 59412, regarding whether the Department should allocate debt to specific divisions of a corporation).

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

Finally, 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.

Comment 5: Petitioners argue that the Department should change its methodology for calculating profit for CV and CEP and revert to the method used in the previous review, accepting Hoogovens' reported profit for CV, which Hoogovens calculated by subtracting the weighted-average actual cost from the weighted-average net price for home market sales of subject merchandise during the POR. Hoogovens divided the profit per ton by the weighted-average actual cost to arrive at the reported profit rate. Petitioners object that instead of using Hoogovens' reported profit rate, the Department calculated it using the 1995 Profit and Loss Statement for Hoogovens' Steel Division with respect to the same general category of products as the subject merchandise, which was the same source the Department used to calculate the CEP profit ratio under section 772(d)(3) of the Act.

Petitioners argue that the Department's recalculation of the CV profit figure is unreasonable, and does not account for the actual amounts incurred for profits in connection with the production and sale of the foreign like product, as required by the statute. In addition, petitioners claim, the Department's use of a financial report that includes non-subject merchandise to calculate the CEP profit ratio is unnecessary and inconsistent with the statutory preference for information relating only to the subject merchandise and foreign like product. 19 U.S.C. § 1677a(f)(2)(C). Further, petitioners argue, there is no reason why the Department should use the same profit figure for both CV and CEP, particularly given that the two figures are typically calculated on a different basis. Petitioners claim that Hoogovens' sales and CV files contain all of the information needed to calculate the CEP profit ratio, with the exception of the cost of goods sold of merchandise sold in the home market, and that this figure can be obtained using the data supplied by Hoogovens in its calculation of CV profit.

Hoogovens argues that the Department's calculation of CEP profit was consistent with its policy bulletin, Calculation of Profit for Constructed Export Price Transactions, Policy Bulletin No. 97/1 (September 4, 1997), and should not be changed for the final results. This bulletin explains that section 772(f) of the Act provides a hierarchy of three alternative methods for calculating CEP profit and that the first of these alternatives ''reflects the expense data available to the Department when conducting a sales below cost investigation.'' *Id.* at 4. Hoogovens points out that since there is no below-cost investigation in this case, the Department must use the next alternatives, described in the policy bulletin as ''expense and profit information derived from financial reports provided by the respondent.'' As explained in the Department's analysis memorandum, the Department therefore ''derived total profit and total expenses from the audited 1995 profit and loss statement of Hoogovens' steel division (Hoogovens Staalbedrijf),'' which was the ''narrowest category for which [the Department] had information on the record in this review.'' Analysis Memorandum (September 2, 1997) at 7.

Hoogovens also argues that petitioners' suggested methodology of using information from Hoogovens' CV files to calculate the cost of goods sold in the home market may be inaccurate because of differences in product mix and timing.

Department's Position: We disagree with petitioners that we should use cost data from the CV file to calculate CEP profit. The calculation of total actual profit under section 772(f)(2)(D) of the statute includes all revenues and expenses resulting from the respondent's U.S. sales and home market sales. However, the calculated profit for CV is only the profit on Hoogovens' home market sales of subject merchandise. It is also inappropriate to use the calculated weighted-average cost for CV as a substitute for the cost of goods sold in the home market, as it includes only the costs of the products sold to the U.S. market, and thus is not representative of the home market product mix. Moreover, because Hoogovens sells to some customers under long-term contracts, the period for reporting home market sales is much longer than the POR. Consequently, there may be more variation in the costs of home market sales than in the costs of U.S. sales, even for the same products. However, the Department agrees with petitioners that it should use the CV profit submitted by Hoogovens to calculate CV instead of the profit rate the Department calculated for the preliminary results, because the former more accurately reflects the scope of merchandise covered in this review. For the final results, the Department used the weighted average profit from the audited 1995 and 1996 profit and loss statements of Hoogovens' steel division to calculate CEP profit, and Hoogovens' reported CV profit ratio to calculate CV.

Comment 6: Hoogovens argues that the Department improperly deducted from CEP expenses incurred in the Netherlands that are attributable to U.S. sales. For the preliminary results, the Department recalculated Hoogovens' reported ISE to exclude ISE incurred in the Netherlands and allocated to U.S. sales of subject merchandise, on the grounds that they did not relate to economic activities in the United States. 62 FR at 47419. The Department then deducted from CEP the expenses of Hoogovens' U.S. sales office and warranty expenses for U.S. sales claimed as indirect. According to Hoogovens, these expenses were not incurred with respect to sales by the Rafferty-Brown companies to the first unaffiliated customers, and these expenses should therefore not be deducted from CEP.

Hoogovens cites the Statement of Administrative Action Accompanying the Uruguay Round Agreements (SAA) as stating that CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by certain expenses and profit associated with economic activities occurring in the United States. SAA at 823. Hoogovens argues that the Department has consistently interpreted this provision to permit the deduction from CEP only of those expenses incurred with respect to the sale to the unaffiliated CEP customer. According to Hoogovens, the activities of its U.S. sales office, HSUSA, in connection with Hoogovens' U.S. sales are limited to the sales to the unaffiliated customer in the case of EP sales, and the sales to the affiliated Rafferty-Brown companies in

the case of CEP sales. Because HSUSA plays no role in the sales by the Rafferty-Brown companies to the unaffiliated customer, Hoogovens argues that the Department should not deduct HSUSA's expenses from U.S. price in CEP situations. See Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17168 (April 9, 1997).

Similarly, Hoogovens argues, warranty and technical service expenses incurred in the Netherlands for U.S. sales are incurred primarily with respect to EP sales and should therefore not be deducted in calculating U.S. price for CEP sales. Hoogovens claims that although some of these expenses were incurred in connection with sales to the Rafferty-Brown companies, these expenses were not related to the Rafferty-Brown companies' sales to the unaffiliated CEP customers. Hoogovens concludes that under the Department's interpretation of section 772(d), these expenses cannot be said to constitute economic activity in the United States.

Petitioners argue that expenses incurred by HSUSA must be deducted from CEP, citing the statute's requirement that the CEP be reduced by ''any selling expenses'' that are ''incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise.'' 19 U.S.C. § 1677a(d). According to petitioners, each of the cases Hoogovens relied upon in its argument dealt with ISE incurred in the home market, and the Department's practice is to deduct such expenses from CEP only where it finds that they are associated with U.S. economic activity, and that they do not relate solely to the sale to an affiliated importer. However, petitioners argue, none of the cases cited by Hoogovens holds that selling expenses incurred in the United States by a U.S. affiliate will not be deducted from CEP.

Department's Position: We agree with respondent. The expenses deducted under section 772(d) of the Act and the profit associated with those expenses represent activities undertaken in the United States to support the U.S. resale to an unaffiliated customer. Generally, these activities are undertaken by the affiliated importer and occur after the transaction between the exporter and the importer.

In the current case, the importer of record, HSUSA, is not a reseller. HSUSA does not take title to the subject merchandise; rather, in the case of CEP sales, the merchandise is shipped directly by Hoogovens to the affiliated service centers, the Rafferty-Brown companies. The Department's new regulations clearly direct us not to deduct from the starting price any expense ''related solely to the sale to an affiliated importer in the United States''; *i.e.,* those expenses that support the sale from the exporter to its U.S. affiliate. 19 CFR 351.402. In this case, the expenses incurred by HSUSA, which are consolidated with those of Hoogovens in the latters accounting system, are related to sales to the Rafferty-Brown companies and to export price sales. Hoogovens reported these expenses as part of the selling expenses incurred in the home market to support U.S. sales. Therefore for these final results, we have deducted only the reported ISE incurred by the Rafferty-Brown companies from CEP.

Comment 7: Hoogovens argues that the Department's presumption that duty absorption will occur on those sales for which the Department found margins, together with its insistence that absorption can only be rebutted by evidence of a separate agreement that the unaffiliated customer will be responsible for antidumping duties, are contrary to Congress' intent that an analysis be performed to determine whether duty absorption is occurring. According to Hoogovens, had Congress intended that duty absorption would be presumed in all cases in which margins exist, Congress could have instructed the International Trade Commission (ITC) to assume that absorption occurred with respect to all sales on which margins were found, obviating the need for the Department to make an absorption determination.

Hoogovens further argues that there is no basis in either law or logic for ignoring the majority of the sales on which no margins were found. According to Hoogovens, the issue of duty absorption must be based on an examination of the respondent's overall sales practices in the U.S. market, including all sales that are examined by the Department in its reviews. The antidumping law does not require that absorption be determined either on a sale-specific basis or solely by reference to sales on which margins exist. Hoogovens contends that the Department should not find that absorption is occurring where a respondent sells to unaffiliated customers at prices which are high enough to cover any antidumping duties that may be assessed on some of the respondent's sales. The downward trend in Hoogovens' margins should be considered as *prima facie* evidence that Hoogovens is passing antidumping duties on to its customers. Finally, Hoogovens concludes, given that it is collecting from its unaffiliated customers revenue in excess of the fair value of the subject merchandise that is more than twice the amount of the antidumping duties calculated in the preliminary results of this review, it is unreasonable to conclude that it is absorbing any of the antidumping duties to be assessed in this review.

Petitioners argue that Hoogovens' objections are untimely and incorrect. In its preliminary results, the Department stated that if interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty, they must do so no later than 15 days after the publication of the preliminary results. 62 FR at 47422. Hoogovens submitted no evidence within the time allotted by the Department to rebut the presumption that absorption of antidumping duties is occurring. According to petitioners, in another case the Department specifically rejected the argument that it should consider sales with prices above fair value in conducting its absorption inquiry:

> We disagree * * * that negative and positive margins should be aggregated. * * * The Department treats so-called ''negative'' margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. It would be inconsistent on one hand to calculate margins using positive margin sales which is the Department's practice, and then argue, in effect, that there are no margins because credit should be given for non-margin sales. Thus, those sales which are used to determine whether there are margins should also be used to determine whether there is duty absorption. Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, Final Results of Antidumping Duty Administrative Reviews, 62 FR 18744, 18745 (April 17, 1997).

Petitioners contend that the Department's policy makes perfect sense, in that under Hoogovens' approach, respondents could shield unfairly traded sales of a particular product through sales of other products that happen to be fairly traded. According to petitioners, this would open an enormous loophole in the law.

Department's Position: We agree with petitioners for the reasons cited, and have not changed our approach for the final results of this review. We have determined that there are dumping margins on 93.0 percent of Hoogovens' U.S. sales by quantity. In the absence of any information on the record that the unaffiliated purchasers in the United States will pay the ultimately assessed duties, the Department finds that respondent has absorbed antidumping duties on 93 percent of its U.S. sales.

Reimbursement

Given the circumstances of this case, the Department has continued to reconsider and refine its policy on reimbursement pursuant to the reimbursement regulation. Accordingly, on December 18, 1997, the Department issued a supplemental questionnaire addressing the reimbursement issue. We requested that parties comment on the following proposed statement of policy:

The Department continues to presume that exporters and producers [1] do not reimburse importers for antidumping duties, absent direct evidence of such activity. However, where the Department determines in the final results of an administrative review that an exporter or producer has engaged in the practice of reimbursing the importer, the Department will presume that the company has continued to engage in such activity in subsequent reviews, absent a demonstration to the contrary. Accordingly, if the producer or exporter claims that the reimbursement situation no longer exists, such producer or exporter must satisfy the Department that (1) the importer is solely responsible for the payment of the antidumping duty, and (2) either (a) the importer was, and continues to be, financially able to pay the antidumping duties, or (b) a corporate event, such as a corporate restructuring or a capital infusion, enabled the importer to generate enough income to pay such duty. December 18, 1997 Supplemental Questionnaire.

In its response dated January 16, 1998, Hoogovens argues that a presumption on the Department's part that reimbursement will recur if there is a finding of reimbursement in the final results of an administrative review is a radical departure from the express terms of the reimbursement regulation. According to Hoogovens, the express terms of the regulation permit the Department to presume reimbursement only in those cases where the importer fails to file a certificate prior to liquidation of entries stating that it has not been reimbursed for antidumping duties. Hoogovens claims that the inclusion in section 353.26(c) of one instance in which reimbursement may be presumed would appear to exclude the Department's authority to apply other presumptions. In Hoogovens' view, to create a presumption found nowhere in the terms of the reimbursement regulation is also fundamentally inconsistent with the Department's application of the regulation, which in both this and other cases has turned on whether the factual circumstances satisfy the precise, literal language of the regulation.

Secondly, Hoogovens argues that the presumption that reimbursement will occur in subsequent reviews is inconsistent with the Department's long-standing position that ''[e]ach antidumping review is a separate proceeding covering merchandise entering the United States during a specific time period, and the facts of each review are considered separately based on information submitted for that proceeding.'' Sulfanilic Acid from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 61 FR 53702, 53707 (October 15, 1996). Hoogovens concludes that a departure from this rule in the present case would be contrary to the Department's obligation to administer the antidumping law in a fair and impartial manner, and could create a burdensome precedent.

Hoogovens assumes that this presumption could not be permanent, and that it would reverse once the Department determined in the final results of an administrative review not to apply the reimbursement regulation. Establishing an essentially permanent presumption of reimbursement is particularly unfair, Hoogovens argues, where the burden with which the respondent is tasked involves proving the negative, that reimbursement has *not* occurred.

Hoogovens asks the Department to amend the proposed statement of policy to eliminate any presumption which fails to maintain the integrity of the section 751 administrative review process, or at least to add the following sentence to the end of the policy statement:

Where a respondent has successfully rebutted allegations of reimbursement for the final results of an administrative review, there will no longer be a presumption of reimbursement in the subsequent review.

In their comments of January 30, 1998 on Hoogovens' January 16, 1998 response, petitioners comment that placing the burden on respondent to demonstrate that reimbursement is not recurring is appropriate, given that respondents control all of the information relevant to a reimbursement determination and the facts may be extremely difficult to uncover, especially where the parties are affiliated. Petitioners argue that because much of the documentation and information regarding the reimbursement issue has first been placed on the record in the present review, it would be inappropriate to relieve Hoogovens of its burden to show that reimbursement is not recurring, based merely on the Department's decision in the previous review. Given the difficulty of uncovering a reimbursement scheme, petitioners argue, a respondent found to have engaged in such a scheme should bear the burden in each subsequent review to show that reimbursement will not occur. At a minimum, a presumption must continue until a respondent has shown, through complete, fully verified information, that reimbursement has ceased.

Petitioners suggest, however, that it is incorrect not to apply the reimbursement regulation when a corporate event, such as a capital infusion, ''enabled the importer to generate sufficient income to pay'' antidumping duties. According to petitioners, such an event may in fact be the very means of reimbursing the importer. Petitioners argue that the Department's proposed policy statement is inconsistent with its stated policy of applying the reimbursement regulation where there is financial intermingling linked to reimbursement, or, in the words of the CIT, ''a link between intracorporate transfers and the reimbursement of antidumping duties.'' *Torrington Company* v. *United States*, Consol. Court No. 95–03–00350 (CIT, October 3, 1996) at 7. Petitioners assert that even in cases where there is no specific agreement to reimburse antidumping duties, the law requires that the reimbursement regulation be applied if there is ''financial intermingling'' between an importer and the producer/exporter that can be linked to reimbursement. In the second administrative review, the Department committed itself to ''examine [in future reviews] whether there is any inappropriate financial intermingling, to ensure that reimbursement does not recur.'' Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Administrative Review, 62 FR at 18478 (April 15, 1997). Petitioners observe that intracorporate transfers between affiliated parties could serve to reimburse duties, regardless of whether the transfers were specifically labeled ''reimbursement,'' and regardless of whether the transfers were made pursuant to an explicit agreement to reimburse. Further, the Department's statement of proposed policy could be read to suggest that the regulation will not be applied where the importer is able to fund its obligations by means of a capital infusion or other intracorporate transfer, regardless of whether such an infusion or transfer is specifically linked to reimbursement. Petitioners argue that this position is inconsistent with the law and incompatible with the basic purpose of the reimbursement regulation. According to petitioners,

[1] Manufacturer, producer, seller, or exporter, as set forth in 19 CFR 351.402(f)(2).

under the Department's proposed policy statement, a respondent caught reimbursing duties could continue to pay such duties without application of the regulation, simply by calling the transferred funds a ''capital infusion.'' Petitioners conclude that this would defeat the entire purpose of the reimbursement regulation and would invite reimbursement schemes.

Petitioners propose the following changes to the Department's proposed policy statement: First, delete clause (2)(b) in the final sentence, and second, add a provision at the end of the statement to indicate that the reimbursement regulation will apply where the Department finds the requisite link between intracorporate transfers and the reimbursement of antidumping duties. Petitioners suggest the following language:

> The Department will apply the reimbursement regulation where it finds ''financial intermingling''—i.e., intracorporate transfers—linked to reimbursement. In this regard, the Department will presume that reimbursement is occurring where an importer that is financially unable to pay antidumping duties receives an intracorporate transfer that enables it to pay such duties. Moreover, even where an importer is financially able to pay duties, the respondent will bear the burden to show that intracorporate transfers are not linked to reimbursement where there is a previous finding of reimbursement.

Petitioners' comments at 11 (January 30, 1998).

Department's Position: The Department has considered the comments submitted in this case and is continuing to follow the guidelines contained in the December 18, 1997, supplemental questionnaire. Based on the comments we received, we appreciate the need for further guidance. Accordingly, we may develop further guidelines in order to define more precisely such terms as corporate restructuring and the circumstances of reimbursement, as the need arises. In the present case, the facts and circumstances surrounding the corporate restructuring are clear and consistent with the purposes of the regulation. See case specific comments on reimbursement below.

Further, we disagree with Hoogovens that these guidelines violate the express terms of the regulation. Contrary to Hoogovens' claim, nothing in the regulation limits the application of a presumption exclusively to certifications under section 353.26(c) of our regulations. Further, while each review is a separate proceeding covering merchandise entering the United States during a specific time period, the establishment of a rebuttable presumption allows the Department to administer the law fairly and effectively. Based upon the final results of a previous review where the Department found reimbursement of antidumping duties, we conclude that respondent's behavior in the review or reviews following that determination requires careful scrutiny. The Department has been granted broad discretionary power to enforce the antidumping law. In the Department's view, that discretionary power is at its zenith when the fundamental purpose of the law is at stake. Reimbursement of antidumping duties relieves the importer of its obligation to pay antidumping duties and thereby undermines the remedial effect of the antidumping law and frustrates the purpose and administration of that law. Accordingly, the Department has full authority to address instances of reimbursement. See SAA at 216. The Department therefore concludes that it has proper authority to establish a rebuttable presumption where a respondent was previously found to have engaged in reimbursement activities.

Whether circumstances warrant reversing the presumption of reimbursement must be decided on a case-by-case basis. In the present case, we have determined that the continuing payment of antidumping duty cash deposits during the POR by Hoogovens warrants maintaining the rebuttable presumption of reimbursement. The prior finding of reimbursement together with the continuing payment of cash deposits is a sufficient basis for shifting the burden of proof to respondent, particularly in light of the fact that the relevant evidence is solely within the hands of the respondent.

We agree with petitioners that, under certain circumstances, the corporate event, such as a capital infusion, may be the very means of reimbursing the importer. The Department's policy is crafted to address the instances in which there has been a finding of reimbursement and the importer is financially unable to pay the duty on its own. In that circumstance, the Department will determine that the importer must continue to rely on reimbursements, such as intracorporate transfers, from the producer or exporter in order to meet its obligation to pay the duties. However, where a corporate event, such as a restructuring, has occurred, the importer must demonstrate that this event provides a continuing source of income to the importer such that the importer is able to pay the antidumping duty on its own (i.e., based upon the importer's total income). In contrast, a capital infusion that is used to pay antidumping duties directly would constitute further reimbursement of antidumping duties. In such a case, the Department will deduct the amount of the reimbursement from U.S. price in calculating the dumping margin.

Case-Specific Comments on Reimbursement

Petitioners argue that the evidence on the record demonstrates that HSUSA is being reimbursed for antidumping duties, and that the Department must apply its reimbursement regulation (19 C.F.R. § 353.26) for the final results. According to petitioners, both the courts and the Department have recognized that in cases where the importer is affiliated with the producer/exporter, the reimbursement regulation may be applied based on an agreement to reimburse or on ''financial intermingling'' that can be linked to reimbursement. See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR at 4410–11 (February 6, 1996); *Torrington Company* v. *United States*, Court No. 95–03–00350 at 7 (October 10, 1996). This practice reflects the fact that intracorporate transfers between affiliated parties could serve effectively to reimburse duties, regardless of whether the transfers are specifically labeled as ''reimbursement.''

Petitioners cite the Department's determination in the second administrative review to examine in subsequent reviews ''whether there is any inappropriate financial intermingling between the companies in order to ensure that reimbursement does not recur.'' Memorandum on Proprietary Comments on Reimbursement in Cold-Rolled Carbon Steel Flat Products from the Netherlands (April 2, 1997), at 4 in Hoogovens' June 26, 1997 Submission at Exhibit D (APO Version). According to petitioners, Hoogovens' statement that ''HSUSA, as sales agent and importer of record for Hoogovens' sales, paid cash deposits on entries for sales during the period of review, using funds transferred periodically by HSBV to HSUSA for that purpose'' is evidence that Hoogovens reimbursed HSUSA on all sales during the POR. Hoogovens' June 26, 1997 Submission at 1 (Public Version). Petitioners summarize the proprietary information on the record in this review in support of their contention that there was financial intermingling between Hoogovens' parent company and HSUSA, and that the corporate restructuring undertaken after the application of the

reimbursement regulation in the first administrative review was motivated by the intention to circumvent the regulation.

Petitioners argue that the Department's decision not to apply the reimbursement regulation in Certain Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42505 (August 7, 1997) (POS Cookware) is not applicable to the facts of this case, and that to the extent that POS Cookware suggests that the regulation will only be applied where the source of funds for duty reimbursement is directly tied to the producer/exporter, it is clearly incorrect. Petitioners claim that under such reasoning, all importers, whether affiliated or unaffiliated, could receive direct reimbursement for duties without adverse consequences, provided the funds came from an affiliate of the producer/exporter, and not the producer/exporter itself. Given the fungibility of money and the numerous transactions between holding companies or parents of foreign producers and their affiliates, petitioners contend the Department could never hope to determine whether the source of funds was the producer/exporter or its affiliate.

Petitioners insist that the source of funds is irrelevant to the purpose behind the reimbursement regulation, which they claim is intended to prevent the absorption of antidumping duties by exporters, and to ensure that injured U.S. industries can fairly compete. Regardless of whether duties are reimbursed by a producer/exporter or its affiliate, according to petitioners it is clear that the duties will still be absorbed and the U.S. industry will continue to be deprived of the opportunity to compete fairly. Thus, petitioners conclude, POS Cookware provides no reason to refrain from applying the reimbursement regulation to the facts of this case.

Hoogovens argues that the Department lacks statutory authority to apply the reimbursement regulation on the basis of affiliated party transactions. Further, Hoogovens contends that there is no substantial evidence on the record of reimbursement within the meaning of the regulation. According to Hoogovens, verified evidence in this review, including the amended agency agreement between Hoogovens and HSUSA and the refund by HSUSA to Hoogovens of the amount of antidumping duties calculated by the Department in the first and second administrative reviews, clearly supports the Department's determination not to apply the reimbursement regulation in the Preliminary Results. See 62 FR at 47421 and Memorandum from Helen M. Kramer to Richard O. Weible (Decision Memorandum in 1995/96 Review), dated August 29, 1997, at 2.

Hoogovens contends that the standard announced by the Department in POS Cookware prevents application of the reimbursement regulation in this review on the grounds that Hoogovens' parent, KHNV, is neither a producer nor a reseller of scope merchandise. While HSUSA and Hoogovens share the same ultimate parent, Hoogovens argues that under the Department's interpretation of the language of the reimbursement regulation, a finding of reimbursement cannot be based on transactions between KHNV and HSUSA. Furthermore, Hoogovens argues, the Department stated in *POS Cookware* that payments from a non-producer/reseller affiliated party to a U.S. importer subsidiary that are specifically for the payment of antidumping duties do not trigger the reimbursement regulation, and this implies that payments that are not for such a purpose (as in this case) cannot trigger the reimbursement regulation. Hoogovens concludes that the Department cannot apply the regulation in either unaffiliated or affiliated party transactions unless the prerequisites of the regulatory language are met, namely that the Department expressly find reimbursement, or payment of antidumping duties by the producer or reseller on behalf of the importer. According to Hoogovens, there is no evidence of such reimbursement in this case.

Finally, Hoogovens rejects petitioners' contention that the purpose of the reimbursement regulation is to remedy duty absorption and to allow the U.S. industry ''to fairly compete.'' Petitioners' brief at 48–49. Hoogovens points out that the reimbursement regulation says nothing about the issue of duty absorption, which is addressed in a separate provision and which may not affect the calculation of antidumping margins. SAA at 215.

Department's Position: After reviewing the proprietary information on the record in this review, the Department has determined that Hoogovens has met its burden of establishing that its affiliated importer, HSUSA, (1) is solely responsible for the payment of the antidumping duties in this review; and (2) has the financial ability to generate sufficient income to pay the antidumping duties to be assessed. See Memorandum from Helen M. Kramer to Richard O. Weible of March 9, 1998. The record shows that there is no longer an agreement to reimburse HSUSA for antidumping duties to be assessed and that HSUSA is now generating sufficient income to pay the duties. Furthermore, HSUSA has repaid Hoogovens the portion of the sums advanced for the payment of cash deposits equal to the antidumping duties to be assessed in the second review.

Further, we disagree with petitioners' position that the regulation should be invoked where a corporate restructuring was motivated by respondent's intention to circumvent the regulation. While we will be extremely vigilant in ensuring that respondent does not circumvent the regulation, it would be inappropriate to adopt a policy that requires us to divine a respondent's intent or motivation. Rather, we will examine the facts of a particular corporate restructuring to determine whether the restructuring provides a continuing source of income to the importer sufficient to cover payment of antidumping duties.

Final Results of Review

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

Manufacturer/exporter	Period of review	Margin (percent)
Hoogovens Staal B.V	8/1/95–7/31/96	6.08.

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

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or

after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the ''all others'' rate from the amended final determination in the LTFV investigation. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 Fed. Reg. 47871. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO 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 this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6884 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Cut-to-Length Carbon Steel Plate From Mexico; Extension of Time Limits for Antidumping Duty Administration Review

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

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1996–1997 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The review covers one manufacturer/exporter of the subject merchandise to the United States, Altos Hornos de México, S.A. de C.V. (AHMSA), and the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT:

Fred Baker at (202) 482–2924, Alain Letort at (202) 482–4243, or John Kugelman at (202) 482–0649, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until August 31, 1998. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 12, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–7010 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Extension of Time Limit for the Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the final results of the antidumping duty administrative reviews of the antidumping finding on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China. The period of review is February 1, 1996 through January 31, 1997. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT:

Matthew Blaskovich or Wendy Frankel, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5831/5849.

Postponement

Under the Act, the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines the deadline is not practicable to complete the review. The Department finds that it is not practicable to complete the above-referenced review within the statutory time limit.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department will extend the time for completion of the final results of these reviews from March 12, 1998 to no later than March 27, 1998.

Dated: March 12, 1998.

Richard Moreland,

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

[FR Doc. 98–7011 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P