DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–806, A–484–801]

Electrolytic Manganese Dioxide From Japan and Greece: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Reviews

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

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the antidumping duty administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. The period of review is April 1, 1998, through March 31, 1999.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tabash, Hermes Pinilla or Richard Rimlinger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047, (202) 482–3477 or (202) 482–4477, respectively.

The Applicable Statute

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

Extension of Time Limits for Preliminary Results

The Department has received a request to conduct administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. On May 20, 1999, and June 30, 1999, the Department initiated these administrative reviews covering the period April 1, 1998, through March 31, 1999 (64 FR 28973 and 64 FR 35124, respectively).

On December 28, 1999, we extended the preliminary results for both cases from December 31, 1999, to February 14, 2000. Because it is not practicable to complete these reviews by February 14, 2000, due to the complexity of the issues involved (*see* Memoranda from Laurie Parkhill to Richard W. Moreland, Extension of Time Limit for Administrative Reviews of Electrolytic Manganese Dioxide from Japan and Greece, February 1, 2000), the Department is extending the time limits for the preliminary results by 75 days from the current deadline of February 14, 2000. Thus, the extended deadline for issuance of the preliminary results is May 1, 2000. The Department intends to issue the final results of reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: February 1, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

A–557–805

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

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

SUMMARY: On November 8, 1999, the Department of Commerce published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1997, through September 30, 1998.

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

EFFECTIVE DATE: February 8, 2000.

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

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (64 FR 60766). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

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

Period of Review

The period of review (POR) is October 1, 1997, through September 30, 1998.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Facts Available

A. Use of Facts Available for Rubfil Sdn. Bhd. (Rubfil)

In accordance with section 776(a)(2)(A) of the Act, we determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Paragraphs 776(a)(2)(A) through (D) of the Act provide, respectively, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a

determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1998. Because Rubfil did not respond to the Department's questionnaire, paragraphs A through C of section 776(a)(2) of the Act apply. Moreover, Rubfil was advised that failure to respond to the Department's questionnaire would be considered a deficiency which would result in the use of facts available. In light of Rubfil's continued failure to respond and in accordance with sections 776(a) and 782(d) of the Act, we must use facts otherwise available to determine Rubfil's dumping margin.

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

As adverse facts available for Rubfil, we have used the highest rate for any respondent in any segment of this proceeding. That rate is 52.89 percent. We find that the rate of 52.89 percent, which was assigned in a prior administrative review, is sufficiently high as to effectuate the purpose of the adverse facts available rule (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (Mar. 16, 1998) (*Thread Fourth Review*)).

B. Corroboration of Secondary Information

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

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

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1995–1996 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Rubberflex, as specified in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We compared the constructed export price (CEP) to the NV for Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd (collectively Heveafil), and Rubberflex Sdn. Bhd. (Rubberflex), also as specified in those sections.

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

Level of Trade and CEP Offset

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

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.,* sales to original equipment manufacturers (OEMs)). According to these respondents, no level of trade adjustment was warranted. Although Filati claimed that the home market level was different, and more remote, than the level of trade of the CEP, we

have found the levels of trade to be the same.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. In examining the record, we found that all sales in the home market for all respondents were in a single channel of trade (*i.e.,* to OEMs) constituting a single stage of marketing. Moreover, we found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for all home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an FOB foreign port price after the deduction of expenses associated with U.S. selling activities. *See* 19 CFR 351.412(c)(2). Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 1, 1999.

Export Price and Constructed Export Price

For Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

In addition, for all companies, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that the extent of the affiliates' activities performed in the United States in connection with those sales was significant. For further discussion, see *Comment 1* in the ''Analysis of Comments Received'' section of this notice.

A. Filati

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

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 64 FR 12967, 12968 (Mar. 16, 1999) (*Thread Fifth Review; Thread Fourth Review,* 63 FR at 12754; and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 54043, 54075 (Oct. 17, 1997) (*AFBs*). *Also see Comment 2* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

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

B. Heveafil

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

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

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

C. Rubberflex

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

We made additional deductions from CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

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

market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Thread Fifth Review,* 64 FR at 12969. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

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

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

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

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

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which we were unable to make comparisons with home market sales, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

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

B. Heveafil

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

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

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

C. Rubberflex

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

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

Currency Conversion

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

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

Analysis of Comments Received

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

A. Filati

Comment 1: Treatment of Direct Container Sales

During the POR, Filati shipped some thread directly from the factory in Malaysia to its U.S. customers. The Department treated these ''direct container'' shipments as CEP sales for purposes of the preliminary results. Filati argues that this treatment was incorrect, based on the Department's criteria for determining whether a sale is an EP transaction (rather than a CEP sale). According to Filati, whenever sales are made prior to the date of importation through an affiliated sales agent in the United States, the Department concludes that EP is the most appropriate determinant of the U.S. price where all of the following factors are present:

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

See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404, 40418 (July 29, 1998) (*Korean Steel*); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18551 (Apr. 26, 1996) (*Carbon Steel from Korea*).

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

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

Filati acknowledges that FLE–USA takes title to the merchandise, invoices the customer, and in some cases, arranges and pays for delivery from the port of entry. However, Filati contends that FLE–USA has only limited authority to set prices in the United States. As support for this assertion, Filati cites to the U.S. sales verification report issued in the prior administrative review, where the Department noted that prices are quoted in accordance with a window that is set based on consultations with the parent company. (*See* Memorandum from Irina Itkin to Louis Apple regarding Verification of the Sales Questionnaire Responses of Filati Lastex Sdn. Bhd. and Filati Lastex Elastofibre in the Antidumping Duty Administrative Review on Extruded Rubber Thread from Malaysia, dated Oct. 7, 1998, at page 4 (*FLE–USA Verification Report*).)

In addition, Filati asserts that the Department has accorded EP treatment to sales by respondents who performed selling functions that were more significant than those performed by FLE–USA. Filati cites to *AK Steel Corp.* v. *United States,* Slip Op. 98–159 at 10–12 (Court of International Trade (CIT), Nov. 23, 1998) (*AK Steel*) and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 64 FR 11825, 11828 (Mar. 10, 1999) (*Dutch Steel*) in support of its position. Filati asserts that, in the former, the CIT upheld the Department's EP classification of U.S. sales where the U.S. affiliate: (1) took title to the shipment; (2) acted as importer of record; (3) made initial contact with the direct shipment customer; (4) negotiated price based upon predetermined factors; (5) received purchase orders from the customer and forwarded them to the exporter/producer for confirmation; (6) invoiced the customer; (7) conducted market research and economic planning; (8) found customers; (9) arranged and paid for post-sale warehousing, transportation, U.S. Customs duties, brokerage, handling, and other expenses; (10) extended credit to and accepted payment from direct container customers; and (11) maintained relationships with those customers.

Regarding the latter, Filati asserts that the Department found that sales were properly classified as EP transactions where the U.S. affiliate: (1) arranged visits and accompanied the foreign producer/exporter on visits to U.S. customers; (2) relayed customer price and quantity quotes to the producer and the producer's reply to the customer; (3) advised the producer whether the price quotes were reasonable based on market research; (4) drafted and signed sales contracts on behalf of the foreign producer; (5) processed U.S. customs declarations and made arrangements with U.S. freight forwarders; (6) acted as importer of record; (7) received payment from the customer; and (8) provided some after-sale support functions, such as facilitating visits by the producer's service technician.

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

The petitioner contends that the Department correctly treated Filati's direct container shipments as CEP transactions. According to the petitioner, Filati concedes that its U.S. subsidiary negotiates U.S. prices, albeit within the constraints of a ''window.'' The petitioner asserts that Filati has failed to adequately define this window, including how it is determined, whether it changes from sale to sale, or whether FLE–USA can in fact determine what the window is. Thus, the petitioner asserts that the Department should continue to classify the sales in question as CEP sales.

DOC Position

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

(emphasis added). Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise *outside of the United States* to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted'' (emphasis added).

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. The decisive factor for classifying sales made prior to importation is where the selling activity takes place (*i.e.,* inside or outside of the United States). Distinguishing EP and CEP transactions based on where selling activity takes place is consistent with the purpose of ensuring that, where appropriate, expenses related to selling activity in the United States are deducted to reach a constructed ''export'' price.

It is the Department's practice to examine several criteria to determine whether sales made prior to importation through a sales agent to an unaffiliated customer in the United States are EP sales, including: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met the Department has classified the sales in question as CEP sales. (*See, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32821 (June 16, 1998) (*Viscose Rayon from Finland); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (Mar. 18, 1998).)

The crucial distinction between EP and CEP treatment in this case lies in the last factor (*i.e.,* whether the entity in the United States acted only as a processor of documentation and a communication link). *See Mitsubishi Heavy Industries* v. *United States,* 15 F. Supp. 2d 807, 811–12 (CIT 1998). This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate. *See Id.* The classification of sales as EP or CEP is not confined to tallying up the various functions of the U.S. selling agent. In *Industrial Nitrocellulose From the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, 6611 (Feb. 10, 1999), we observed that ''[t]he Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond the ancillary role.'' As noted above, in cases where the U.S. affiliate or sales agent has a significant role in making U.S. sales (including setting the price in the United States and providing after-sale support), we generally find that CEP treatment is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664, 30685–86 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain,* 63 FR 40391, 40395 (July 29, 1998) (*SSWR from Spain);* and *Viscose Rayon from Finland.* 63 FR at 32821.

Our analysis of the facts in this case indicates that during the POR Filati's U.S. affiliate, FLE–USA, played an extensive role in making direct container sales. Specifically, FLE–USA: (1) Made initial contact with the customer; (2) transmitted the order to Filati in Malaysia; (3) quoted prices without consulting the parent company on a sale-by-sale basis; (4) took title to the merchandise; (5) invoiced, and received payment from, the customer; and (6) arranged and paid for delivery from the U.S. port to the customer. *See* page 9 of the September 13, 1999, supplemental response and the *FLE–USA Verification Report* at page 4. Thus, the record shows that FLE–USA was significantly involved in every aspect of the sales to U.S. direct container customers, except for arranging for shipment of the subject merchandise from Malaysia to the U.S. port of entry.

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

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

We also find that Filati's reliance upon *Dutch Steel* is misplaced. The record on which that determination was based demonstrated that the U.S. subsidiary performed limited liaison functions in the processing of sales-related documentation and held a limited role as a communication link. Specifically, the U.S. subsidiary in that case did not take title to the merchandise, finance sales, provide technical assistance, issue order confirmations or invoices, or accept payment from customers (except in extraordinary circumstances). *See Dutch Steel,* 64 FR at 11828. Moreover, the Department stated in its final determination that the U.S. subsidiary had no authority to negotiate prices, that it did not initiate contact with U.S. customers on its own authority, and that the preponderance of selling functions involved in U.S. sales occurred in the Netherlands. *Id.* at 11828–29. In the instant case, because FLE–USA contacted customers, took title to the merchandise, quoted prices without consulting with the parent company on a sale-by-sale basis, issued invoices, and accepted payment, we find that FLE–USA did not act as a mere communications link or document processor.

We similarly find Filati's citation to *AK Steel* to be inapposite. In *AK Steel,*

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

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

Comment 2: Offset for Imputed Costs Associated With AD/CVD Duty Deposits

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati concedes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with the recent practice articulated in *AFBs.* However, Filati contends that the Department's change in policy conflicts with prior decisions made both by the Department and the CIT. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2104 (Jan. 15, 1997 (*1994–1995 AFBs Reviews*); and *Federal-Mogul* v. *United States,* 950 F. Supp. 1179 (CIT 1996).

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

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

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

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

DOC Position

Consistent with Department's current practice, we have continued to deny an offset to Filati's U.S. indirect selling expenses for theoretical expenses related to financing of antidumping and countervailing duty cash deposits. For a discussion of the Department's reasoning behind this practice, see *AFBs*, 62 FR at 54075 and *Thread Fifth Review*, 64 FR at 12973.

We continue to believe that this practice is valid in general for the reasons articulated in *AFBs* and *Thread Fifth Review.* However, even were we to reverse our practice, the record of this case does not support Filati's claim. Specifically, we disagree with Filati's argument that it incurred a real expense that it would not have incurred but for the existence of the antidumping duty order. The only expenses relevant to this question are U.S. financing expenses. Because the record shows no evidence of financing activity in the United States, we find that Filati incurred no ''real'' expense, despite its assertions to the contrary.

Regarding Filati's argument that expenses associated with financing cash deposits of antidumping duties may not be deducted from CEP, we find that Filati failed to demonstrate how the Department's denial of its offset resulted in an improper deduction of such selling expenses. Indeed, because the Department deducted neither actual nor imputed financing expenses, nor the cash deposits themselves, we have in fact made no deduction for expenses associated with financing Filati's cash deposits. In contrast, we find that Filati's scheme to reduce actual expenses by the amount of a theoretical offset is contrary to the explicit language of the Act, which requires the deduction of all selling expenses incurred by or for account of the affiliated seller in the United States in selling the subject merchandise. *See* section 772(d) of the Act.

Finally, regarding Filati's citation to *Timken*, we note that in this decision the CIT acknowledged that it is the Department's current practice to deny the type of offset in question. While we concede that *Timken* references a number of cases which were remanded to the Department after denying the offset, we note that these cases were decided according to the Department's prior practice in this area.

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

B. Rubberflex

Comment 3: Errors in Rubberflex's Sales Response

In December 1999, Rubberflex notified the Department that it had discovered an error in its home market database which affected two sales. Specifically, Rubberflex stated that it had discovered that one of the sales in question had been exported to a third country and the other returned by the customer. At the Department's request, Rubberflex submitted documentation demonstrating that these transactions were not in fact home market sales. (*See* Memorandum from Shawn Thompson to The File regarding Submission of Additional Data and Extension of Briefing Schedule in the 97–98 Antidumping Duty Administrative Review on Extruded Rubber Thread from Malaysia, dated December 3, 1999.) Accordingly, Rubberflex contends that the Department should disregard these transactions when calculating NV.

The petitioner maintains that Rubberflex's December submission should be rejected because it was untimely. Moreover, the petitioner alleges that Rubberflex has not demonstrated that the submission complies with the Department's requirements on new submissions—namely that the nature of the alleged errors is apparent from the prior record itself.

DOC Position

It is the Department's practice to accept a correction of a party's clerical error if certain conditions are met. *See, e.g., Antifriction Bearings (Other Than*

Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590, 35625 (July 1, 1999). In this case, those conditions have been met.

In accordance with 19 CFR 351.301(c)(2), the Department may request that a respondent submit factual information at any time during a proceeding. Because the Department requested that Rubberflex submit the documentation in question, it is not untimely within the meaning of 19 CFR 351.301.

We find that the documentation provided by Rubberflex provides clear evidence that the sales at issue had been reported in error. Contrary to the petitioner's assertions, the Department does not require respondents to demonstrate that factual errors in their data are apparent in the record of a proceeding. The effect of such a requirement would be to preclude respondents, as is the case here, from notifying the Department of any clerical errors found in their data. *See NTN Bearing Corp.* v. *U.S.*, 74 F.3d 1204, 1207–08 (1995). Consequently, because Rubberflex provided sufficient proof that the sales in question were not home market transactions, we have disregarded them for purposes of the final results.

Comment 4: Calculation of U.S. Indirect Selling Expenses

The petitioner argues that Rubberflex understated the indirect selling expenses of its U.S. subsidiary, Flexfil, because it allocated a certain portion of these expenses to Canadian sales which were not invoiced by Flexfil. The petitioner contends that, if Flexfil had had significant involvement in the sales, they would have appeared on Flexfil's books. Furthermore, the petitioner asserts that such ''off the books'' allocations are inherently unverifiable and arbitrary. According to the petitioner, the Department should reallocate these expenses using only the sales made by the subsidiary and recorded in the subsidiary's books.

DOC Position

In its supplemental questionnaire response, Rubberflex demonstrated that Flexfil was actively involved in making sales to Canada. (*See* pages 15 and 16, as well as Exhibit 32, of the September 7, 1999, submission.) Not only did Flexfil routinely accept orders from Canadian customers on behalf of Rubberflex, but it also corresponded with them regarding the status of these orders and it handled various problems which arose during the sales process.

Thus, because the indirect selling expenses incurred by Flexfil related, in part, to sales to Canada, we find that it is appropriate to allocate a portion of these expenses to Canadian sales. We note that this treatment of Flexfil's indirect selling expenses is in accordance with our treatment of such expenses in prior segments of this proceeding. *See, e.g., Thread Fifth Review*, 64 FR at 12976, where the Department verified Flexfil's role in making Canadian sales. Accordingly, we have accepted Flexfil's indirect selling expense allocation for purposes of the final results.

Final Results of Review

As a result of comments received we have revised our analysis and determine that the following margins exist for the period October 1, 1997, through September 30, 1998:

Manufacturer/Exporter	Percent margin
Filati Lastex Sdn. Bhd	0.45
Heveafil Sdn. Bhd./	.....
Filmax Sdn. Bhd	0.17
Rubberflex Sdn. Bhd	1.10
Rubfil Sdn. Bhd	52.89

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

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

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

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

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2845 Filed 2–7–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703, A–588–707]

Continuation of Antidumping Duty Orders: Granular Polytetrafluoroethylene Resin From Italy and Japan

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

ACTION: Notice of Continuation of Antidumping Orders: Granular Polytetrafluoroethylene Resin from Italy and Japan.

SUMMARY: On December 3, 1999, the Department of Commerce (''the