

Reporting' and Value Added in the United States by Thomas Steel," dated July 3, 2003. See also the Thomas Steel value-added verification report at pages 1 to 13, which supports Corus Staal's claim that the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent, covered by the descriptions in the "Scope of the Review" section of this notice, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of hot-rolled steel from the Netherlands.

We have relied on the following eleven criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut-to-length sheet, whether temper rolled or not, whether pickled or not, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's January 9, 2003, questionnaire.

Export Price and Constructed Export Price

Section 772(a) of the Tariff 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 for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of the Tariff Act 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 under sections 772(c) and (d)."

In the instant review Corus Staal sold subject merchandise through two affiliated steel service centers which further manufacture flat-rolled steel products: Rafferty-Brown Steel Co., Inc. of Connecticut and Rafferty-Brown Steel Co. of North Carolina (collectively, Rafferty Brown). Corus Staal reported each of these transactions as CEP transactions, and the remainder of its U.S. sales of subject merchandise as EP transactions. However, after reviewing the evidence on the record of this review, we have preliminarily determined that certain of Corus Staal's reported EP transactions are classified properly as CEP sales because these sales occurred in the United States. Such a determination is consistent with section 772(b) of the Tariff Act and the U.S. Court of Appeals for the Federal Circuit's (Federal Circuit's) decision in *AK Steel Corp. et. al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Federal Circuit examined the definitions of EP and CEP, noting "the plain meaning of the language enacted by Congress in 1994 focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications." *AK Steel* at 1369. It also stated that "the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate," and noted the phrase "outside the United States" had been added to the 1994 statutory definition of EP (called "purchase price" in the pre-1994 statute). *AK Steel* at 1368–70. Referring to the CEP definition, the *AK Steel* Court then defined the term "seller" as "one who contracts to sell" and the term "sold" as "the transfer of ownership or title." *AK Steel* at 1371. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

During the POR Corus Staal executed all agreements with U.S. customers and amendments related to those agreements in the Netherlands. See Corus Staal's May 19, 2003, supplemental questionnaire response (May 19, 2003, SQR) at 2. Corus Staal also served as the

importer of record for subject merchandise entered during the POR. See Corus Staal's January 30, 2003, questionnaire response (January 30, 2003, QR) at A–15, footnote 10. However, prior to the start of the POR, agreements and amendments were signed by Corus America, Inc. (CAI). May 19, 2003, SQR at 2. CAI is the entity through whom Corus Steel USA Inc. (CSUSA), a subsidiary of Corus Staal's parent company, Corus Nederland BV, has a contract to provide administrative and some selling functions on Corus Staal's behalf.³ See the January 30, 2003, QR at A–18 and the March 28, 2003 supplemental questionnaire response (March 28, 2003, SQR) at A–6. In these instances when CAI signed the agreements and amendments, CAI would draft the document and forward it to Corus Staal in the Netherlands for approval. After approving the draft document by dating and signing it, Corus Staal would send the document back to CAI, who would then sign and issue the final version to the customer. See Sales Verification Report at 4–5. Thus, some sales made during the second quarter of 2001 (*i.e.*, from May 3 to June 30, 2001) were made subject to agreements and/or amendments signed by CAI in the United States. May 19, 2003, SQR at 2. Because the contracts for sales made during May and June 2001 were concluded in the United States, we find these sales to be CEP transactions within the meaning of section 772(b) of the Tariff Act.

With respect to the remainder of Corus Staal's reported EP sales (*i.e.*, those sales to unaffiliated U.S. customers made between July 1, 2001, and October 30, 2002), we have continued to classify them as EP transactions because the contracts governing these sales were signed by Corus Staal in the Netherlands and Corus Staal served as the importer of record.

For those sales which we are classifying as EP transactions, we calculated the price of Corus Staal's EP sales in accordance with section 772(a) of the Tariff Act. We based EP on the packed, delivered, duty paid prices for export to end users and service centers in the U.S. market. We adjusted gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts, where applicable. We also made deductions for movement expenses in

³ CSUSA receives an income from Corus Staal for these services, which are provided by employees of CAI; CAI, in turn, bills CSUSA on a monthly basis. See the March 28, 2003, SQR at A–5 and A–6.