Blvd.; and, *Site 3* (410 acres)—Felts Field Airport, East 6105 Rutter Avenue. All three sites are jointly owned by the City of Spokane and Spokane County, and the Airport Board plans to serve as overall zone operator.

The application contains evidence of the need for foreign-trade zone services in the Spokane area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on October 24, 1996, at 2:00 p.m., Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, Washington 99201.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 8, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 25, 1996.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 601 W. First Avenue, Suite 507, Spokane, WA 99204–0317

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: October 2, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–25955 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

A–588–810

Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review; Mechanical Transfer Presses from Japan.

SUMMARY: On April 4, 1996, the Department of Commerce (the Department) published the preliminary results of review and termination in part of the review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. The review covers four manufacturers/exporters of the subject merchandise to the United States and the period February 1, 1994 through January 31, 1995. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from petitioner and three respondents. Based on our analysis, we have changed the final results from those presented in the preliminary results of review. We have determined that sales have not been made below normal value (NV). We will instruct U.S. Customs to assess antidumping duties equal to the differences between the export price and NV.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

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 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On April 4, 1996, the Department published the preliminary results and termination in part of the review of the antidumping duty order on MTPs from Japan (61 FR 15034, April 4, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive of the scope of the order.

The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover spare and replacement parts and accessories, which were determined to be outside the scope of the order. (*See* ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992.)

This review covers four manufacturers/exporters of MTPs, and the period February 1, 1994 through January 31, 1995.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from petitioner, Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL-CIO/CLC), and from respondents, Aida Engineering, Ltd. (Aida), Kurimoto Co., Ltd. (Kurimoto), and Komatsu Ltd. (Komatsu). We received rebuttal comments from petitioner, Aida, and Kurimoto.

I. Kurimoto

Comment 1: Petitioner asserts that the Department should revise the profit for Kurimoto's U.S. sale. Petitioner cites to the Statement of Administrative Action (SAA) to the URAA at 169, which states:

> Constructed value is used as the basis for normal value where home market sales of the merchandise in question are either nonexistent, in inadequate numbers, or inappropriate to serve as a benchmark for a fair price, such as where sales are disregarded because they are sold at below-cost prices. Because constructed value serves as a proxy for a sales price, and because a fair sales price would recover SG&A expenses and would include an element of profit, constructed value must include an amount for SG&A expenses and for profit.

Petitioner notes that the URAA establishes the following alternative methods for calculating amounts for profit in those instances where the respondent's sales of the foreign like product cannot be used: 1) the actual profit realized by the same producer on

home market sales of the same general category of products; (2) the weighted average profit realized by the other investigated companies on home market sales of the foreign like product, made in the ordinary course of trade; and 3) any other reasonable method, provided that the amount for profit does not exceed the profit normally realized by other companies on home market sales of the same general category of products. Section 773(e)(2)(B) of the Act; SAA at 170.

Petitioner argues that the Department should use the profit rate calculated for Aida in this administrative review, in accordance with alternative two in the URAA cited above. For more information, see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Aida for the Final Results of Review,'' dated September 17, 1996.

Kurimoto contends that the statute requires that the profit level of the specific producer be utilized. Kurimoto notes that, as stated in the SAA, the statute does not establish a hierarchy among the alternative methods for calculating profit and SG&A, and that the Department may use any reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers. Kurimoto argues that the profit level utilized by the Department was reasonable because it was consistent with both the statute and the SAA and was made with reference to the actual experience of the producer. Kurimoto argues that the complex and highly customized nature of each MTP, and the pricing for each MTP, may result in great differentiation between the profit levels experienced with regard to each press sold even by the same producer, and that to resort to the profit level experienced by another producer would bear no relationship to the conditions faced by the actual producer in manufacturing and selling a different piece of machinery under different conditions. Kurimoto further argues that utilizing Aida's profit level for Kurimoto's calculation would place the Department in a position of violating its obligations under the law. Kurimoto states that the Department is required to make full, prompt and accurate disclosure of Kurimoto's margin calculation. Kurimoto argues that Aida's profit level is business proprietary information to which Kurimoto is not entitled, and that, if the Department were to utilize Aida's profit level in the margin calculation for Kurimoto, it would be placed in the position of disclosing Aida's business proprietary information.

Department's Position: For the preliminary results we utilized Kurimoto's profit as directed by section 773(e)(2)(A), which states that the constructed value of the importer merchandise shall be equal to:

> The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general and administrative expenses, and for profits, in connection with the foreign like product, in the ordinary course of trade, for consumption in the foreign country.

We have evaluated the reasonableness of using Kurimoto's profit on sales of the foreign like product by comparing it to profit incurred by the producer on sales of merchandise of the same general type as the exports in question, and Aida's profit on sales of the foreign like product. We have concluded that it is appropriate to use Kurimoto's profit on sales of the foreign like product. Because we have continued to use Kurimoto's data, the question of whether we would be able to provide Kurimoto disclosure of its margin calculation while protecting Aida's proprietary information is moot. For further discussion, see the memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 2: Petitioner argues that Kurimoto failed to include cost variances in its constructed value. Petitioner argues that the Department requested this information in its supplemental questionnaire and that Kurimoto failed to report this information, but that this information was verified by the Department and should be used for Kurimoto's constructed value.

Kurimoto contends that petitioner does not understand the facts with regard to these costs. Kurimoto argues that it utilizes a job order cost system as the basis for its cost accounting for MTPs. Kurimoto notes that its reported costs were tested during the course of verification, and no discrepancies were found. Kurimoto argues that, if the Department is to make an adjustment, it should only do so for labor. For more information see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Department's Position: We agree with petitioner. We found at verification that these costs were associated with labor; however, Kurimoto did not provide the information which would allow us to apply this adjustment only to labor. We agree with Kurimoto that we found no discrepancies with the reported job order costs we tested, with the exception of foreign inland freight charges; however, in the course of verification, we did find cost variances. Therefore, we are making the adjustment for variances suggested by the petitioner. For further discussion, see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 3: Petitioner argues that the Department should correct for Kurimoto's failure to include certain expenses in its constructed value. Petitioner asserts that Kurimoto's failure to include these costs is confirmed by documents in its questionnaire response, and that the Department should correct for this omission.

Department's Position: We agree with petitioner and have included these costs in Kurimoto's constructed value. For further discussion, see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 4: Petitioner argues that the Department should treat Kurimoto's U.S. installation and testing costs as movement charges. Petitioner notes that, for the preliminary results, the Department treated these expenses as direct selling expenses and made a circumstance-of-sale adjustment by adding these expenses to constructed value.

Petitioner notes that, during the less-than-fair-value (LTFV) investigation, the Department examined the issue of the proper treatment of U.S. installation and testing expenses and determined that these expenses are movement charges associated with the U.S. sale. Petitioner cites to the *Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan* (55 FR 335) January 4, 1990, which states:

> With respect to installation and installation supervision, however, we have determined that these expenses should be treated as movement charges. Due to their large size, it is necessary to disassemble MTPs for shipment and delivery to the customer's facilities. Upon delivery to the customer's premises, the presses must be reassembled (installed) in order to function. Because disassembly and reassembly are necessary to deliver the merchandise, we have determine

that installation and related supervision expenses are movement charges. Therefore, we have deducted the installation and installation supervision costs from the verified MTP prices when installation and/or supervision of installation were included in the contract price for the press.

Petitioner asserts that installation and testing services are required because the MTPs must be disassembled for shipment and must be reassembled (installed) in order to function at the customer's location, and that, for the final results, the Department should follow its stated policy and treat Kurimoto's installation and testing expenses as movement charges that should be subtracted from the price of the U.S. MTP.

Kurimoto argues that a reclassification of these costs is a meaningless exercise because the Department made a circumstance-of-sale adjustment by adding these expenses to constructed value, and therefore these expenses are already reflected in the Department's preliminary margin calculation.

Department's Position: We agree with petitioner. It is appropriate to consider such costs as movement expenses as we did in the LTFV investigation and in subsequent reviews. Because of their size, MTPs must be broken down for shipment and installed at the customer's site. For the final results we have classified installation costs as movement expenses in accordance with our prior practice. Therefore, we have subtracted these expenses from the export price, rather than adding them to CV.

Comment 5: Petitioner argues that the Department should correct what it claims are understatements of the imputed credit expenses for Kurimoto's U.S. sale. Petitioner argues that the Department should recalculate the credit expenses, using the period from the date of shipment to the U.S. customer. Petitioner argues that, in the LTFV investigation, the Department determined that the credit period should begin with date of shipment to the U.S. customer.

Petitioner also argues that the Department should recalculate the imputed credit expenses for Kurimoto's U.S. MTP based on a revised principal balance that includes the tax portion of the sale. Petitioner notes that at verification the Department examined a postcard that showed a payment amount that included a three percent tax.

Finally, petitioner questions an assumption the Department made regarding Kurimoto's credit expense. For an additional discussion of this issue see the memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Kurimoto argues that these suggested adjustments to imputed credit expenses are not reasonable. Kurimoto cites to *Federal-Mogul Corp.* v. *United States,* and states that in that case the plaintiff demanded that the Department take into account effects of delayed payment of home market expenses in the calculation of circumstance-of-sale adjustments to foreign market value. (See *Federal-Mogul Corp.* v. *United States,* 839 F. Supp 881, 17 CIT 1249, 1252–1253 (1993) (*Federal-Mogul*).) Kurimoto notes that in *Federal-Mogul* the Court relied on the Court of Appeals for the Federal Circuit's reasoning in *Daewoo Elec. Co.* v. *United States* 6F.3d 1511 (CAFC 1993), and stated that requiring that econometric analysis of tax incidence would prevent the Department from completing antidumping determinations within the statutory time frames and that the additional burden would not be justified on the basis of more soundly based results. Kurimoto argues that the Court determined that reliance on the respondent's financial records for the purposes of the circumstance-of-sale adjustment was sufficient, and that the Department was ''not required to factor in the effects of delayed payment of home market selling expenses on these COS adjustments.'' Kurimoto argues that the reasoning of *Federal-Mogul* is equally applicable to credit in its case. Kurimoto argues that the Department has had access to all relevant information which has been available to respondent and the information which the respondent supplied has been verified, and that to go beyond this would demand a level of exactitude which is beyond that required by Congress and that of which the Department is capable in the context of an administrative review.

Kurimoto also argues that the adjustments suggested by petitioner, such as a change in period for the credit expense calculation, or a deduction of the three percent tax amount from the payment amounts utilized in the credit calculation, would have only a minuscule effect on the margin calculation.

Department's Position: We agree with petitioner, in part. It is appropriate to include in the calculation of credit expense an amount for tax, and credit should be calculated from the date of shipment. With respect to petitioner's point regarding an assumption made by the Department, Kurimoto supplied information at verification, and on September 9, 1996 in response to our request for additional information about credit. This information is sufficient for us to make certain assumptions regarding credit. We agree with Kurimoto that it would be unreasonable for us to delay the results of the review any longer given that the Department has sufficient record evidence on this issue. We therefore have accepted the information supplied by Kurimoto. For an additional discussion of this issue see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 6: Petitioner argues that the Department should include direct selling expenses in the constructed value for Kurimoto's U.S. merchandise. Petitioner notes that Kurimoto's reported selling, general and administrative (SG&A) expenses included an amount for indirect selling expenses, direct selling expenses, and general and administrative expenses, but that at verification Kurimoto submitted a revised SG&A calculation in which direct selling expenses were excluded from total SG&A expenses, and that the Department used the revised calculation in its preliminary results.

Petitioner argues that exclusion of direct selling expenses from the constructed value is improper because constructed value should include SG&A expenses as if the U.S. MTP had been sold in the home market. Petitioner asserts that, for the final results, the Department should revise its preliminary constructed value calculations to include the direct selling expenses reported by Kurimoto.

Kurimoto argues that the expenses removed from the SG&A calculation at the beginning of verification were for U.S. sales, not sales of the foreign like product, and that such expenses should not be included in NV. Kurimoto notes that the Department reviewed its calculations of SG&A at verification.

Department's Position: We agree with Kurimoto. Section 773(e)(2)(A) of the Act states that constructed value is to include:

> The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general and administrative expenses, and for profits, in connection with the production and sale of a foreign like product in the ordinary course of trade, for consumption in the foreign country.

At verification Kurimoto submitted revised SG&A expenses because the figure it had originally reported

included selling expenses incurred for the U.S. sale. We examined the selling expenses that Kurimoto had removed from the SG&A calculation and found that these expenses were incurred for the U.S. sale. We therefore have continued to use the revised SG&A expense figures submitted at the beginning of verification.

Comment 7: Kurimoto argues that the Department should deduct an amount from foreign inland freight for the shipment of spare parts. Kurimoto asserts that the Department should calculate a per kilo amount for foreign inland freight, then multiply this amount by the kilos of spare parts shipped, using entry documents, invoices and packing lists submitted to the Customs Service and included in its supplemental questionnaire response. Kurimoto argues that this figure should be subtracted from total foreign inland freight.

Petitioner contends that the Department should reject Kurimoto's claim for revised foreign inland freight expenses because the claim is untimely, unverified, and not consistent with other information that is on the record in this review. Petitioner argues that Kurimoto did not submit this claim with in its questionnaire responses or prior to verification. Petitioner argues that the Department should also reject Kurimoto's suggestion that the Department use U.S. Customs entry documents to adjust its Japanese inland freight costs because they are not relevant to Kurimoto's inland freight costs. Petitioner contends that Kurimoto's reported Japanese inland freight expense calculations and documents in Kurimoto's questionnaire response indicate that Kurimoto's reported Japanese inland freight costs did not include freight for spare parts. Petitioner also argues that Kurimoto's proposed method for adjusting its reported Japanese inland freight costs should be rejected because MTPs are shipped in large pieces that require special handling, and that spare and replacement parts do not need such handling; therefore, Kurimoto's methodology would allocate these costs to spare parts which did not incur these costs.

Department's Position: We agree with petitioner. As Kurimoto did not submit this claim with its questionnaire responses or at any time prior to verification, the claim is therefore untimely. During verification, we found additional foreign inland freight charges. Kurimoto did not claim, at that time, that any of these freight charges were for spare and replacement parts. We also disagree with Kurimoto that it would be appropriate to calculate a per kilo amount for foreign inland freight, then multiply this amount by the kilos of spare parts shipped based on U.S. Customs documents. As petitioner notes, some of the foreign inland freight charges are for special equipment which might not be necessary for spare and replacement parts. There is no information on the record as to which of these charges pertained to which type of shipment. Therefore, based on the foregoing, we have not made a deduction for foreign inland freight to account for spare and replacement parts.

II. Aida

Comment 1: Petitioner asserts that the Department should reject Aida's claimed adjustment to convert transfer prices to cost of production. Petitioner notes that Aida reported in its questionnaire response that it received major inputs for the U.S. MTPs from its affiliated company, Aida Welding Company Ltd. (Aida Welding). Petitioner further notes that Aida reported that Aida Welding produced the welded steel frames for the crown assembly, slide assembly, bed assembly and column assembly, and that Aida submitted a worksheet showing the transfer prices and Aida Welding's cost of production for the welded steel frames. Petitioner argues that the Department treated this transaction improperly by accepting Aida's adjustment to the transfer price. Citing Sections 773(f) (2) and (3) of the statute, petitioner argues that the statute (1) provides for an adjustment to the value of an input obtained from an affiliated party when the value reported by the respondent is less than the cost of production for the input, and (2) allows the Department the discretion to disregard a transaction if the value does not reflect the amount usually reflected in sales of the merchandise under consideration. Petitioner contends that it is the Department's policy to use affiliated party transfer prices for constructed value as long as the transfer prices reflect market value and are above the cost of production. Petitioner asserts that, for the final results, the Department should revise the constructed values for Aida's sales to exclude the adjustment claimed by Aida to convert the cost of direct materials purchased from Aida Welding from transfer price to Aida Welding's cost of production.

Aida disagrees with petitioner and asserts that the Department correctly applied the price-to-cost adjustment for assemblies produced by Aida Welding. Aida notes that welded frame assemblies for Aida are produced by Aida Welding, which is a wholly-owned subsidiary of Aida, that Aida Welding operates as part of the consolidated operations of Aida, and that Aida's purchases from Aida Welding are not at arm's length. Aida states that purchases from affiliated entities are recorded in Aida's accounting at the transfer price, and that Aida included a price-to-cost adjustment in its constructed value submission in the amount of the difference between transfer price and cost of production for the welded frame assemblies produced by Aida Welding for each U.S. press. Aida argues that the effect of this adjustment was to state the cost of welded frame assemblies on the basis of fully-absorbed cost rather than transfer price, and that the same methodology was applied by Aida in the original investigation and in the prior reviews in which Aida participated.

Aida contends that petitioner's arguments that Section 773(f)(2) of the Act allows affiliated party transactions to be disregarded only if the transfer price is below market value and that section 773(f)(3) allows affiliated party transactions to be based on cost only if transfer price is below cost, are incorrect. Aida argues that Section 773(f)(2) allows transfer price to be disregarded if there is no market reference price for the particular merchandise, in which case the Department may use cost as an appropriate measure of value.

Aida notes that in the original investigation there were no market prices for the welded frame assemblies produced by Aida Welding for Aida, and asserts that there has been no change in the present review. Aida argues that it properly reported the cost of the welded frame assemblies produced by Aida Welding on the basis of cost of production rather than transfer price and that the Department properly included the cost-to-price adjustment in its calculation of constructed value.

Department's Position: An adjustment to the transfer price for the Aida Welding steel frame assemblies is not appropriate in this review. In the *Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990), we found that some of Aida's affiliated party parts purchases were made at transfer prices below the cost of production. Therefore, we valued the steel frame assemblies at their cost of production. This issue has not been addressed in the preliminary or final results of subsequent reviews of this order. Section 773(f)(2) of the Act states that the Department may disregard the transfer price if it ''does not fairly reflect the amount usually reflected in sales of

merchandise under consideration in the market under consideration.'' The transfer price is not below cost and there is no evidence that the transfer price does not reflect normal market value. Therefore, it would be inappropriate to ignore the transfer price. Accordingly, for these final results, we have disallowed the adjustment for the steel frame assemblies claimed by Aida.

Comment 2: Petitioner asserts that the Department should adjust the costs reported by Aida for parts obtained from an affiliated company, Access Co., Ltd. (Access). Petitioner notes that section 773(f)(3) of the statute states that, if the Department has reasonable grounds to believe or suspect that the values reported for purchases of major inputs from affiliated suppliers are less than the cost of production, the Department may determine the value of the inputs on the basis of information available regarding cost of production. Petitioner asserts that the Department requested that Aida demonstrate that purchases from its affiliated suppliers were at arm's length, and that Aida failed to submit information for Access that it submitted from another affiliated party. Petitioner argues that the Department should not accept Aida's failure to respond to the Department's request that Aida demonstrate that parts purchased from Access were at arm's-length prices. Petitioner argues that the Department should adjust the cost of production of Access parts by certain percentages. (For an additional discussion of petitioner's position on this issue see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Aida for the Final Results of Review,'' dated September 17, 1996.)

Aida disagrees with petitioner and argues that the Department correctly valued materials purchased from Access at transfer price. Aida notes that in its questionnaire response it stated that it purchased certain electric components, namely control boxes and operation stands, from Access, which is a subsidiary of Aida that engages in research, development, and manufacture of electric-controlled parts for presses. Aida further notes that, unlike Aida Welding, Access is not a consolidated subsidiary of Aida, and that the prices for the components purchased from Access were determined in arm's-length negotiation between Access and Aida. Aida argues that, because of the foregoing, it used the transfer price as the cost of components purchased from Access. Aida maintains that petitioner's argument that the Department has reasonable grounds to believe or suspect Access' sales were below the cost of production is not supported by the record. Aida argues that the considerations that apply to Aida Welding do not similarly apply to Access because the prices to Aida Welding are not made at arm's-length. Aida claims that it did respond to the Department's questions in its supplemental questionnaire response.

Aida further contends that petitioner's contention that the Department should determine a presumed cost of production for the Access components using information in the record with respect to the difference between transfer price and cost for components supplied by Aida Welding is contradictory. Aida argues that, as petitioner acknowledges, the Aida Welding transfer prices were above the cost of production; therefore, they provide no support for petitioner's contention that the Access transfer prices were below cost. Aida argues that petitioner compounds the confusion by proposing that the percentage difference between transfer price and cost for Aida Welding components be applied to the Access transfer prices, but with the sign reversed, using the percentage by which Aida Welding's cost was below transfer price as the measure for increasing the Access transfer price. Aida argues that petitioner's request that the Department adjust the Access prices should be rejected.

Department's Position: Aida was responsive to the questions asked in our supplemental questionnaire regarding this issue. In its response, Aida stated that these parts were purchased at arm's length based on quotations issued by Access and in negotiations between Aida and Access, and that it did not purchase identical or similar parts from unaffiliated parties. Based on this information, and the relationship between the parties, we have accepted Aida's claim that the purchases were made at arms-length. Therefore, we have continued to accept the transfer price for the Access purchases.

Comment 3: Aida asserts that the Department made clerical errors in its calculation of profit, and argues that the Department should correct these errors for the final results. Aida notes that the Department calculated the home market profit rate by eliminating below-cost sales from the calculation. Aida asserts that, in doing so, the Department made several errors in copying certain data from Aida's exhibits.

Department's Position: We agree that clerical errors were made and have made the necessary corrections to the CV profit calculation. In reviewing our methodology, we find that we should not have excluded any home market sales from our calculation of CV profit. We did not receive an allegation that home market sales were made at prices below the cost of production (COP) and have not determined that any home market sales are outside the ordinary course of trade (*i.e.*, sales made at prices below COP in substantial quantities over an extended period of time). Therefore, for our final results we have included all home market sales in our calculation of profit.

Comment 4: Aida argues that the Department erred in its calculation of the net profit amount for the constructed export price profit calculation by erroneously dividing net profit only by home market cost of sales, not by total cost of sales as the Department indicated it did in its analysis memorandum for the preliminary results.

Department's Position: We agree and have recalculated constructed export price (CEP) profit using the cost of sales.

Comment 5: Aida asserts that the Department failed to add to the U.S. price an imputed benefit for payment made prior to shipment. Aida notes that Department's questionnaire states that such a benefit will be allowed if payment is made prior to shipment. Aida asserts that for the final results the Department should add to the export price and CEP the imputed interest benefit of payments received prior to shipment by including the negative credit expense in its calculations.

Department's Position: We agree with Aida. Because payment was made prior to shipment, Aida should receive an imputed benefit for credit. We have therefore included the imputed benefit for credit for the final results.

Comment 6: Aida argues that the Department failed to make a CEP offset adjustment in its preliminary results calculation of NV for U.S. transaction #2, which was a CEP sale. Aida contends that, since CEP was calculated at a less advanced stage of distribution than NV, an offset should have been applied pursuant to Section 773(a)(7)(B) of the Act. Aida argues that the Department established the methodology for making level of trade comparisons involving CEP transactions in the supplemental questionnaire in the sixth administrative review of Antifriction Bearings, which states:

> When the U.S. sale is classified as an export price (EP) sale, the level of trade for that sale is based on the selling functions provided by the seller to the first unaffiliated party. When the U.S. sale is classified as a constructed export price (CEP) sale, the level of trade for that sale is based upon the selling

functions provided by the seller (i.e., the exporter and its affiliates to the first unaffiliated party, less those selling functions related to expenses which are deducted under section 772(d) of the Act. Thus, for CEP sale, the selling functions used to establish the level of trade cannot include selling functions related to expenses deducted under section 772(d). For comparison market sales, the level of trade is based upon the selling functions provided by the seller and its affiliates to the first unaffiliated customer.

Aida asserts that in determining whether CEP sales and comparison market sales involve the same or different selling activities, the level of trade for CEP sales is based on the selling activities included in CEP after deduction of Section 772(d) expenses.

Aida notes that, pursuant to section 772(d), the Department deducted all selling expenses in calculating CEP for U.S. transaction #2, thus reducing CEP to a level of trade that included no selling functions, and argues that NV calculated by the Department for U.S. transaction #2 included the selling functions related to indirect selling expenses, namely indirect warranty, indirect advertising and indirect sales office expense. Aida argues that, since NV includes selling functions not included in CEP, NV was established at a different level of trade from CEP and at a more advanced stage of distribution than CEP. Aida asserts that the effect of the level of trade difference between NV and CEP sales cannot be demonstrated by price differences in the home market because the CEP level of trade (i.e., sales with no selling functions) does not exist in the home market. Accordingly, the conditions for granting the CEP offset are met, and the offset should be applied in calculating NV for U.S. transaction #2.

Aida argues that the application of the CEP offset is required not only by Section 773(a)(7)(B), but also by the ''fair comparison'' standard in Section 773(a), which states that in determining whether subject merchandise is being sold at less than fair value a fair comparison shall be made between the export price or the CEP and NV. Aida contends that the Department double counted indirect warranty expense, indirect advertising expense, and indirect sales office expense since these costs were applied both to increase NV and to reduce CEP, and that NV and CEP must be stated on the same basis, which is accomplished through a CEP offset.

Petitioner asserts that the Department correctly determined that a CEP offset is not warranted for Aida's CEP sale. Petitioner argues that the SAA to the URAA makes clear that the CEP offset is no longer automatic, but is only to be applied where different levels of trade have been shown to exist, and that the respondent bears the burden of establishing the appropriateness of adjustments that decrease NV. Petitioner contends that Aida has not provided any evidence that demonstrates differences in selling functions at different levels of trade. Petitioner argues that Aida's questionnaire responses indicate that there are no differences in selling functions for its MTP sales. Petitioner further argues that Aida's assumption that an adjusted CEP includes no selling functions is not correct because the adjusted CEP still includes any indirect selling expenses or functions incurred in the home market on behalf of U.S. sales. Finally, petitioner argues, Aida failed to demonstrate that differences in levels of trade result in price differences for the MTPs.

Department's Position: Aida has not demonstrated that a CEP offset is warranted. As petitioner notes, the CEP offset is no longer automatic and the respondent bears the burden of demonstrating that such an offset is warranted. In the *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan* (61 FR 38139, July 23, 1996) (*Newspaper Presses*), we noted that respondents must provide the necessary data for the Department to consider a level of trade adjustment; without such data, a level of trade adjustment under section 773(a)(7)(A) cannot be made and, further, a CEP offset under section 773(a)(7)(B) is not authorized. As in *Newspapers Presses*, the respondent in this case, Aida, did not submit in its questionnaire responses any information indicating that there were different selling functions between CEP and home market sales. Further there is no support in the record for Aida's claim that there are no selling functions in CEP. Because Aida did not provide the necessary level of trade information, a CEP adjustment for Aida's CEP sale is not warranted.

Comment 7: Aida maintains that U.S. press #2 in its questionnaire response is not an MTP from Japan, because the press body was produced for Aida in Taiwan. Aida argues that only the transfer unit was imported from Japan. Aida argues that it erred on the side of completeness in reporting the sale in its questionnaire response, but noted there that press and transfer unit were outside the scope of review. Aida notes that the Department treated the transfer unit from Japan as within the scope of the review, and cites to the preliminary results, which state:

> The scope includes ''parts suitable for use solely or principally'' with MTPs. Therefore, because the transfer unit was imported as an original equipment part of an MTP, we have preliminarily determined to include the transfer unit in this review.

61 FR 15035, April 4, 1996.

Aida argues that the definition of MTPs, as clearly demonstrated by the record of the MTP antidumping proceeding, consists only of MTPs, whether imported assembled or disassembled and whether classified as machines or parts, and does not include MTP parts *per se*.

Aida argues that the petition in the MTP case requested an investigation of imports of MTPs only, not MTPs and parts thereof. Aida cites to the general description of merchandise and the tariff classification in the petition, the Department of Commerce Notice of Initiation, the Department of Commerce Hearing and the International Trade Commission Final Determination, and argues that it was clear throughout all phases of the investigation that the class or kind of subject merchandise consisted of MTPs from Japan, and that parts were mentioned only as one form in which a complete machine might be imported, and that MTP parts or components *per se* were not included in the investigation. Aida contends that this was confirmed by the Department in its March 16, 1992 scope proceeding on MTP spare parts. Aida states that, while the petitioner had argued in the scope proceeding that the petition was intended to cover parts, the Department concluded that the petition did not encompass subassemblies and parts thereof. Aida notes that the March 16, 1992 scope ruling, while not specifically addressing the situation presented by Aida press #2, stated that the order is limited to fully assembled MTPs and disassembled/unassembled parts of a unique MTP.

Aida argues that the language from the scope definition on which the Department relies in its preliminary results is language from the petition, which covers disassembled/unassembled MTPs in multiple shipments, not MTP parts *per se*.

Petitioner disagrees with Aida, and states that the Department's determination that the MTP transfer unit exported from Japan is subject to review is correct. Petitioner argues that the transfer unit is an original equipment part and that the plain language of the antidumping duty order covers original equipment parts. Petitioner argues that in the LTFV

investigation the petition included MTPs, as well as parts and the individual component items that comprise unassembled MTPs. Petitioner argues that the language in the order contains no qualifications or limitations that the importation of original equipment parts must in all cases comprise a complete unassembled MTP, but does contain coverage for original equipment parts that are used solely or principally in MTPs. Petitioner argues that in the scope ruling on spare parts the Department found that the scope language of the order was ambiguous with respect to the issue of parts. Petitioner argues that in the context of that ruling the Department acknowledged that individual parts of a complete, disassembled press that are imported from Japan are covered merchandise, and that some parts not comprising a complete disassembled press are covered so long as they satisfy the order criteria are ''suitable for use solely or principally'' with an MTP.

Department's Position: We disagree with Aida. The scope of the order covers MTPs that are imported either assembled or unassembled. The transfer unit, which was imported from Japan, is an essential component of the complete MTP. Aida states in its July 7, 1995, questionnaire response that a mechanical transfer press is distinguished from other types of mechanical presses by a tie rod frame construction and *an internal transfer feed mechanism designed as an intregral part of the press* (emphasis added). The sale in question was made by Aida in Japan to a U.S. customer for a complete MTP. Therefore, the transfer unit falls within the scope of the order. We disagree with Aida that the spare parts ruling can be applied in this case. Spare and replacement parts, when imported with an MTP, constitute additions to or replacements for an already complete MTP. In contrast, the transfer unit is an essential component of an original, complete, unassembled MTP. Based on the foregoing, we have included the transfer unit in our final results.

III. Komatsu

Comment 1: Komatsu argues that the Department's determination in the preliminary results that Komatsu had withheld requested information, and its resultant decision to base Komatsu's margin on the facts otherwise available, were based on the incorrect assertion that it did not have sufficient information regarding the nature of the parts Komatsu exported to the United States. Komatsu asserts that it submitted a scope ruling request on the same date that it submitted a letter to the Department explaining that it had no U.S. sales of subject merchandise during the review period. Komatsu asserts that it later submitted thousands of additional pages of information regarding the nature of the parts it exported to the United States in response to the Department's requests for information relating to the scope analysis. Komatsu argues that, while it did not respond to sections B, C, and D of the questionnaire, it did not have sales to the United States of subject merchandise. Therefore, Komatsu argues, there is no basis for the Department's assertion that Komatsu withheld information, and the Department's preliminary determination should be revised.

Komatsu argues that there is no reason to delay the issuance of the results of the scope inquiry. Komatsu argues that its scope inquiry is not novel or complicated, and asserts that the Department should conclude that the small quantity of parts Komatsu exported during this period of review are not within the scope of the antidumping order on MTPs from Japan. Komatsu argues that the Department should establish a zero cash deposit rate for Komatsu because it had no shipments of subject merchandise during this review period and the most recent dumping margin for Komatsu was zero.

Petitioner disagrees with Komatsu and argues that the Department's use of facts available for its preliminary analysis of Komatsu's sales is appropriate. Petitioner asserts that Komatsu failed to submit a response to the Department's questionnaire and that the Department properly considered the MTP parts exported to the United States by Komatsu subject to this administrative review because the Department has not issued a scope ruling concerning these parts.

Department's Position: Pursuant to our scope determination issued on October 1, 1996, the parts at issue have been excluded from the order. Therefore, the issue of whether we should use facts available for Komatsu's failure to respond to sections C and D of the questionnaire is moot. For the final results, we are treating Komatsu as a non-shipper, and Komatsu will retain its rate from the last administrative review in which it had shipments. Komatsu's rate, therefore, is zero percent.

Final Results of the Review

We determine that the following dumping margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Aida Engineering, Ltd	2/1/94–1/31/95	0.00
Kurimoto, Ltd	2/1/94–1/31/95	0.00
Komatsu Ltd	2/1/94–1/31/95	0.00
Ishikawajima-Harima Heavy Industries, Ltd	2/1/94–1/31/95	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies will be the rate established in these final results; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at LTFV, which is 14.51 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 subsequent assessment of double antidumping duties.

Notification to Interested Parties

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 19 CFR 353.34(d). Timely written

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)) and 19 CFR 353.22.

Dated: October 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25957 Filed 10–8–96; 8:45 am]

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[A–570–501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review of Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China.

SUMMARY: On April 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping order on natural bristle paint brushes and brush heads (paint brushes) from the People's Republic of China (PRC). The review covers six manufacturers/exporters and the period February 1, 1994 through January 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and information requested from respondent, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

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 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On April 4, 1996, the Department published in the Federal Register (61 FR 15037) the preliminary results of the antidumping duty order on paint brushes from the PRC. The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers the period February 1, 1994 through January 31, 1995, and six producers/exporters of Chinese paint brushes.

Separate Rates

We have changed our separate rates determination with respect to the Hebei Animal By-Products I/E Corp. (HACO) from the preliminary results of review.

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide).* Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of de jure absence of government control includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. De facto absence of government control with respect to exports is based on four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

The evidence on the record demonstrates that HACO meets the *de jure* and *de facto* criteria. In the preliminary results we denied HACO a separate rate because, based on the information on the record at that time, we found that HACO might not have autonomy in making decisions regarding the selection of its management. From the record, it appeared that the provincial government appointed HACO's general manager. However, because the implication of the provincial government's role in selection of HACO's management was not clear from the record, given that HACO met three of the four *de facto* criteria, we gave HACO an opportunity to clarify its response. We requested additional information from HACO, and considered such information in determining whether to assign HACO a separate rate in these final results of review.

On April 26, 1996, HACO submitted additional information in order to clarify its response. HACO stated that its general manager is selected through a poll of company employees, and that the ''appointment' is a type of pro forma registration with the provincial government that occurs after the company employees have voted. Based on this explanation, we find that HACO has autonomy from the government regarding the selection of management. Therefore, we have determined that HACO meets all four of the *de facto* criteria. For further discussion of the Department's final determination that HACO is entitled to a separate rate, *see Decision Memorandum to the Director,* dated September 20, 1996: ''Separate rate analysis for Hebei Animal By-Products I/E Corp in the administrative review of natural bristle paint brushes and brush heads from the People's Republic of China,'' which is on file in the Central Records Unit (room B099 of the Main Commerce Building).