Final Results of Review

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

Manufacturer/exporter	Period of review	Margin (percent)
United Engineering Steels Limited (UES) (now British Steel Engineering Steels Limited)	3/1/94–2/28/95	1.56

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (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 less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation (58 FR 6207, January 27, 1993). 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 23, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28117 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On May 9, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers Saha Thai Steel Pipe Company, SAF Steel Pipe Export Company, and Pacific Pipe Company. The period of review (POR) is March 1, 1994 through February 28, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1374 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

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 (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 May 9, 1996, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (61 FR 21159, May 9, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by Saha Thai and SAF by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Saha Thai/SAF, manufacturers/exporters of the subject merchandise (respondents), and from Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe (petitioners).

Comment 1: Petitioners contend that for Saha Thai/SAF's U.S. sales the Department used an incorrect date of sale in its margin calculation. These incorrect dates were used to determine which sales took place in the POR, for choosing exchange rates, and for product matching with home market sales. Petitioners argue that the dates provided to the Department reflect downstream sales made by parties in the United States who the Department determined were not related to Saha Thai or SAF (see memo from Joseph A. Spetrini to Susan G. Esserman dated April 29, 1996). Because respondent did not provide any sales dates reflecting the transactions between Saha Thai/SAF and U.S. importers/resellers, and because certain invoice dates for SAF sales represent sales based upon long-term contracts which may have been signed months or years in advance of the invoice date, petitioners hold that the appropriate date of sale is either the date of the underlying contract or the date of the purchase order from the U.S. customer to SAF. However, since neither date appears in SAF's sales listing, petitioners contend that it is impossible to determine which sales are appropriately in the POR.

In addition, petitioners argue that there is an unknown universe of sales contracts and purchase orders made during the POR which would have been sold by the importers after the POR. These sales were not reported as Saha Thai sales because the basis for reporting Saha Thai's U.S. sales was the importers' sales to downstream customers. These sales may or may not have had SAF invoice dates or entry dates within the POR. The only other date reported by Saha Thai is the shipment date, but again, this date does not reflect the date of the sales contract or purchase order date.

As a result of this failure to place the necessary date of sale information on the record of this review, petitioners argue that the Department should base its final results on facts available, pursuant to 19 U.S.C. 1677e(a), which states that the Department shall base its determination on the facts available, subject to certain qualifications, ''if: (1) necessary information is not available on the record, or (2) an interested party or other person—(A) withholds information that has been requested by the administering authority * * * (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified. * * *''

Petitioners contend that respondents have clearly withheld information requested by the Department which, if provided, would have allowed the Department to complete its statutorily mandated tasks in this review. Specifically, the Department requested information regarding the sales process between Saha Thai and its customers. According to petitioners, Saha Thai failed to provide a complete explanation of its sales process and did not clearly state that it enters into contracts for the sale of pipe, either directly or through SAF, to the importers. It provided no details of any such contracts, and did not provide an example of a contract prior to verification. In addition, the Department warned Saha Thai in a letter of January 11, 1996 that it should ''be prepared to reclassify these SAF-related sales if the Department determines that they should be treated as EP sales.'' Petitioners assert that this is an unambiguous request for Saha Thai to ensure that the proper information was on the record to perform an EP sales analysis. Saha Thai responded by simply stating that ''there is no legal basis for reclassification of SAF-based U.S. sales.'' Petitioners contend that the information currently existing on record cannot be used for the final results under 19 U.S.C. 1677m(e) since the response is so incomplete that it cannot serve as a reliable basis for reaching the final results and cannot be used without undue difficulty. Consistent with sections 1677e(b) (3) and (5), the Department should apply the 17.28 percent margin found in the amended final results of the 1992–93 administrative review. Petitioners add that resorting to facts available would be consistent with Departmental practice, as evidenced by *Circular Welded Non-Alloy Steel Pipe from South Africa* (61 FR 24271, 24272–3, May 14, 1996) and *Circular Welded Non-Alloy Steel Pipe from Brazil* (57 FR 42940, September 17, 1992), affirmed sub nom. Persico Pizzamiglio S.A. v. United States, Slip Op. 94–61 (CIT 1994).

Respondents argue that they prepared their questionnaire response based on the assumption that the Department would accept their arguments that Saha Thai's U.S. sales would be considered CEP sales due to the relationship which existed between the producer/exporter and importer/reseller in the U.S. The respondents did not anticipate the Department's contrary decision. Saha Thai argues that neither the Department nor petitioners raised any significant concerns over the dates of sale reported in Saha Thai's responses, and did not advise Saha Thai that it should report two dates of sale in its supplemental questionnaire response, one for the resale in the United States and one for the sale from Saha Thai to SAF. Respondents add that petitioners' call for the use of facts available is an ''extraordinarily harsh'' result, considering the circumstances involved in this case.

Respondents agree with petitioners that the incorrect date of sale was used in the preliminary determination and that a date of sale, using pre-URAA methodologies, does not appear in the response. Respondents propose that the Department use Saha Thai's invoice date as the date of sale for purposes of its final determination. According to Saha Thai, the proposed antidumping duty regulations make invoice date the date of sale in most circumstances, including those prevailing in this administrative review. Proposed section 351.401(i) states that ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporters or producer's records kept in the ordinary course of business.'' As an alternative, Saha Thai suggests that the Department reopen the administrative record for the limited purpose of permitting Saha Thai to submit the dates of sale for all sales subject to review.

Respondents also disagree with petitioners' concerns that certain sales subject to the review are missing from the data base. Respondents assert they

reported all sales which entered the U.S. during the period of review.

Department's Position: In its questionnaire response, Saha Thai asserted that because it and its two primary U.S. customers shared an ownership interest in SAF Steel Export Company, the importers/resellers in the United States were related to the producer/manufacturer by means of this common ownership of SAF. Saha Thai reported the subsequent downstream sales as constructed export price (CEP) sales made to the first unrelated party in the United States. However, in our preliminary results, we treated Saha Thai and SAF as a single enterprise and determined that this enterprise was not related to the importers/resellers in the United States, and we instead used Saha Thai/SAF's export price (EP) sales to these importers/resellers as the United States sales. As a result of this decision by the Department to review the EP sales made by Saha Thai/SAF rather that the downstream sales originally reported as CEP, the Department finds that the record of this review does not contain the information normally required to determine the date of sale to be used to compare these EP sales to normal value. Given this background, the Department agrees with both parties that an incorrect date of sale was used in the preliminary results of this administrative review for these sales.

However, the Department disagrees with petitioners' assertion that resorting to facts available is appropriate for our final results. Although respondents contend that they had no expectation that the Department would examine Saha Thai/SAF's sales to the U.S. importers, respondents should have reported the contract date of the sales in question. Notwithstanding the deficient content of Saha Thai's response, the Department determines that resorting to facts available in this review would not be appropriate because Saha Thai's response is otherwise usable within the meaning of section 782(e) of the Act. Saha Thai's response was timely and verifiable. The response also listed the invoice dates of sales made by Saha Thai/SAF to the U.S. importers/resellers, which the Department has found to be a reliable alternative for the missing date of sale information. Moreover, the Department does not consider respondents to have withheld ''information that has been requested'' by the Department, as the Department did not clearly instruct Saha Thai/SAF to report the date of sale for its sales to the U.S. importers.

Although the dates of sale of transactions between Saha Thai/SAF and the primary U.S. importers/resellers are not on the record of this proceeding, the respondent did provide, and the Department verified, the invoice date pertaining to these sales made by Saha Thai/SAF to the importers/resellers in the United States. Because the Department has determined that the use of facts available is not appropriate, the Department has determined to use invoice date as date of sale. Using invoice date as date of sale is consistent with the Department's proposed antidumping regulations and represents a reasonable surrogate for the actual date of sale when the essential terms of the sale were established: as stated in the Department's *Notice of Proposed Rulemaking and Request for Public Comment* (61 FR 7308, 7330, February 27, 1996), the Department ''will rely on the date of invoices as date of sale.''

The Department acknowledges that certain U.S. sales were made pursuant to long-term contracts between Saha Thai/SAF and the U.S. purchasers/resellers and that there may be a substantial lag between the contract date and invoice date. However, the Department verified that Saha Thai/SAF reported all invoices during the POR that were issued pursuant to these contracts and that these invoices contain the price, quantity, specifications, and the terms of sale established in the long-term contracts. We are assured that we analyzed all sales of subject merchandise which were shipped to the United States during the POR. Therefore, after extensive consideration of the date of sale issue, we conclude that for the sales in question it is reasonable to utilize date of invoice as date of sale.

Comment 2: Petitioners allege that the Department has incorrectly reduced the amount of ocean freight to be deducted from export price by multiplying that value by the exchange rate. Saha Thai's reported ocean freight was reported in U.S. dollars/MT. Therefore, the Department erred by multiplying this value by the exchange rate. Respondents did not address this issue.

Department's Position: We agree with petitioners, and the final results incorporate this correction to the program.

Comment 3: Petitioners contend that the Department erred by deducting indirect selling expenses and inventory carrying costs from both export price and normal value. Such deductions are appropriate only in a constructed export price scenario (see 19 USC 1677a(d)).

Saha Thai states that U.S. direct selling expenses should not have been deducted from export price, in accordance with section 772 of the URAA.

Department's Position: The Department agrees with both parties that, in accordance with section 772 of the Act, direct and indirect selling expenses should not have been deducted from export price. Also, indirect selling expenses should not have been deducted from NV, in accordance with section 773 of the Act. These corrections are reflected in the final results.

Comment 4: Petitioners argue that, in calculating constructed value (CV) for four products not sold in the home market, the Department applied an incorrect methodology to calculate profit. Petitioners allege that the department calculated CV profit based upon the average profit of all the products sold in the home market. Petitioners contend that the Department should have calculated the profit on these four product codes using the average profit of those home market sales that passed the arms-length test and exclusive of sales made at below cost of production. Petitioners add that 19 USC 1667b(e)(2)(A) requires that CV profit be calculated using ''actual amounts incurred and realized * * * 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. * * *'' According to petitioners, the statutes states that sales disregarded pursuant to 19 USC 1667b(b)(1) as being made at below the cost of production shall be outside the ordinary course of trade (see 19 USC 1677(15)).

Respondents contend that the Department's calculation of profit for merchandise sold in the United States but not in the home market is correct. Respondents state that the Tariff Act of 1930 as amended by the URAA and the accompanying Statement of Administrative Action (SAA) clearly state that the exclusion of below-cost sales is not required nor is contemplated by the statute to calculate the profit for products not sold in the home market. According to respondents, 19 USC 1677b(e)(2)(A) states that the profit used in constructed value shall be based on the ''actual amounts incurred and realized'' by the producer ''in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. * * *'' In such cases where there are no home market sales of the foreign like product, 19 USC 1677b(e)(2)(B) sets forth three alternatives for determining a CV profit: (1) The actual amount of profit incurred or realized by the same producer on home market sales of the same general

category of products; (2) the weighted-average of actual amounts incurred or realized by other investigated companies on home market sales of the foreign like product; or (3) any other reasonable method, provided that the amount of profit does not exceed the profit normally realized by other companies on home market sales of the same general category of profits. Respondents argue that 19 USC 1677b(e)(2)(B)(i) contains no limitations on the universe of sales to be used by the Department in calculating average profit, except that the sales must be from the same ''general category of products.'' Respondents continue by stating that the prohibition against below-cost sales contained in 19 USC 1677b(e)(2)(A) is not applicable to the alternative methodologies contained in 19 USC 1677b(e)(2)(B). While both these sections make reference to the calculation of profit, the SAA makes clear that these provisions are separate and distinct and can only be used in narrowly defined circumstances. Respondents contend that if Congress had contemplated the exclusion of below-cost sales in such circumstances, a specific reference would have appeared in the statute or in the SAA.

Department's Position: When calculating profit for purposes of CV, we have excluded below-cost sales in accordance with section 773(e)(2)(A) only when we have disregarded home market sales because they failed the cost test. *See* Statement of Administrative Action Accompanying the URAA, *reprinted in* H.R. Doc. No. 316, 103rd Cong., 2nd Sess. 834, 839–840 (1994). We have not calculated CV profit in accordance with section 773(e)(2)(B) because that provision applies only when there are no home market sales of the foreign like product or when all such sales are at below-cost prices (SAA at 840). In this review, we have determined that all products produced by the respondent and sold in the home market during the POR are foreign like products within the meaning of section 771(16). Moreover, we have determined that there are sufficient above-cost sales upon which to base CV profit. Accordingly, section 773(e)(2)(B) is not applicable in this review.

Comment 5: Petitioners argue that Saha Thai's duty drawback calculation is incorrect, and that the adjustment to export price should be denied. Petitioners contend that at verification, the Department discovered for the first time that the reported drawback for 1995 sales was based upon December 1994 data because Saha Thai had not received the correct data in time for the response. According to petitioners, this information was not disclosed to the Department until verification. Petitioners contend that Saha Thai is eligible for a drawback only in the amount of duties actually paid and rebated, in accordance with 19 U.S.C. 1677a(c)(1)(B). Because that amount was unknown as late as April, 1996, when Saha Thai submitted its final revisions to its response, the duty drawback adjustment made to 1995 sales should be denied.

In addition, petitioners argue that Saha Thai has overstated the duty drawback adjustment it is entitled to on all U.S. sales by the amount of the back guarantees posted to the Thai government. According to petitioners, Saha Thai is required to post a cash deposit equal to the value of the import duties plus an additional 20 percent. Petitioners contend that Saha Thai is not entitled to claim the entire amount as a drawback of duties. It is argued that the additional 20 percent does not represent a drawback within the meaning of section 772(c)(1)(B) because this 20 percent represents a premium owed to the government as a penalty if the merchandise is not exported in the required time period. The statute states that an exporter is eligible for an adjustment only for import duties paid and rebated, thus Saha Thai's claim for an adjustment for the entire amount paid plus 20 percent overstates what Saha Thai is eligible to claim.

Respondents agree with petitioners that its reported 1995 duty drawback figures were necessarily based upon its December 1994 actual drawback experience. Saha Thai states that it did not have access to drawback documentation for shipments made in 1995 until well after its response was due to the Department.

Regarding petitioners' concern that respondent overstated its drawback figures to include the 20 percent bank guarantee, Saha Thai states petitioners are in error. Saha Thai asserts that the Department thoroughly verified petitioners' concerns regarding this issue, and found Saha Thai's claims to be consistent with information in Saha Thai's records. At verification, the Department reviewed Saha Thai's bank guarantees, Customs Department duty refund documentation, and various import documents which demonstrate that the duty drawback figures reported to the Department do not include the additional 20 percent premium charged on bank guarantees.

Department's Position: For both 1994 and 1995 (for which documentation was not available at the time of the questionnaire responses, but was available to respondent and the Department at verification), the Department verified that Saha Thai correctly reported its claimed duty drawback adjustment and that Saha Thai did not include the additional 20 percent bank premium. For further information, please see the Department's verification report (Memo to File from James Rice and Rick Johnson, April 30, 1996).

Comment 6: Petitioners argue that the Department should disregard Saha Thai's claimed theoretical weight adjustment. Petitioners note that the Department's verification report indicates that Saha Thai has the ability to calculate a product-specific weight adjustment, and argue that respondent should have done so rather that calculate an average weight adjustment. Petitioners contend that in previous reviews, Saha Thai has provided the information necessary to make this calculation. Use of a single ratio is, according to petitioners, unjustified where the respondent has demonstrated the ability to compile the necessary information in a similar review.

Saha Thai argues that the Department has accepted a weighted-average adjustment in previous reviews (1992–93 administrative review). Additionally, previously calculated product-specific theoretical weight adjustments varied with factors that occur randomly by size and by time period. Saha Thai can often use coils of two or three different thicknesses to produce a given size and grade of pipe. The use of thicker or thinner coils depends on the coil in stock, and the unit price affects the weighted-average theoretical weight adjustment in ways that are unpredictable and not intrinsically related to the physical characteristics of the merchandise. Moreover, there is no evidence on the record indicating that Saha Thai takes such variations into account in pricing its product in any market.

Department's Position: As stated in the Department's verification report, we reviewed Saha Thai's theoretical weight adjustment calculation and found it consistent with previous administrative reviews (*see Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Amended Final Results of Antidumping Duty Administrative Review in Accordance with Decision on Remand* 61 FR 29533 (June 11, 1996) and *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand* 56 FR 58355 (November 19, 1991), which were accepted by the Department. In addition, it was determined by the Department that coils of varying thicknesses are used by Saha Thai to produce a particular size and grade pipe

product. In addition, even though the final product may incorporate various thicknesses of coil (representing different coil costs), there was no evidence found a verification that such different coil costs affected the final price of the subject merchandise.

Comment 7: Petitioners object to Saha Thai's practice of shifting the interest expense embedded in the cost of coil to SG&A. Petitioners contend that this practice of deducting interest expense from the coil cost and adding it to SG&A has the effect of reducing Saha Thai's reported cost of production. Petitioners contend that these interest costs are a part of the direct acquisition cost of the coil and are properly included in raw materials costs.

Saha Thai argues that the Department resolved this issue in the final results of the 1992–93 administrative review, finding that interest expenses are fungible and therefore should be treated as a general expense of the corporation. Consistent with that determination, respondent holds that it is appropriate to transfer interest expenses from raw material cost to SG&A. Such expenses should be included either in SG&A, as provided in Saha Thai's supplemental questionnaire response, or in interest expense.

Department's Position: As stated in the final results of the 1992–93 administrative review of this case, we consider the cost of raw materials to be the price reflected in the supplier's invoice for those materials. Any financing charges itemized on the supplier's invoice are properly regarded as interest expenses, not material costs. *See, Oil Country Tubular Goods From Israel; Final Results of Antidumping Duty Administrative Review*, 57 FR 1140 (April 3, 1992). We consider the expenses Saha Thai incurs to finance its material purchases through its supplier to be fungible and, therefore, a general expense of operating the company. *See, Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less Than Fair Value*, 51 FR 3384 (January 27, 1986), *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 61 FR 1328 (January 19, 1996). Therefore we have continued to classify Saha Thai's interest expenses as SG&A expenses for these final results of review.

Comment 8: Petitioner states that the Department incorrectly calculated total cost of production (TOTCOP) and net sales price (NPRICOP) for its below cost sales test. 19 USC 1677b(b)(3) requires that cost of production include (1) to the cost of materials, fabrication and processing, (2) an amount for selling, administrative and general expenses, and (3) the cost of containers (packing). Petitioners argue that the Department failed to include selling expenses in its calculation of TOTCOP. Petitioners contend that the Department improperly deducted selling expenses from NPRICOP rather than properly adding them to TOTCOP in accordance with the statute.

Respondents note that petitioners' arguments are not reflective of the Department's standard policy regarding the calculation of TOTCOP and NPRICOP. Saha Thai asserts that if selling expenses are included in TOTCOP, then domestic transportation and selling expenses should not be deducted from the NPRICOP in order to ensure that there is an apples-to-apples comparison.

Department's Position: The Department agrees that our comparison of net sales price and cost of production was incorrect. In order to ensure an ''apples to apples'' comparison between the net home market selling price and the total cost of production of the subject merchandise, for the final results of this administrative review, in accordance with section 773(b)(3)(B) we included selling expenses in the calculation of total cost of production and did not deduct domestic transportation expenses from NPRICOP.

Comment 9: Saha Thai argues that the Department departed from established practice when it immediately resorted to constructed value rather than moving on to the next most similar home market sale where an appropriate (identical or first most similar) match could not be found. Respondents cite *Certain Forged Steel Crankshafts from the United Kingdom* (56 FR 5975, 5977, February 14, 1991) (*Crankshafts from the United Kingdom*) in which the Department stated ''In the first review, when there were no contemporaneous sales of the most similar home market model to compare with sales of a U.S. model, we examined the other similar models for contemporaneity. As a result of this examination, we found that none of those other sales was contemporaneous. As a result, we had to rely on CV as the basis for FMV. However, the facts are different in this review. In this review [the second administrative review of *Crankshafts from the United Kingdom*], when there were no contemporaneous sales of the most similar model match, there were often contemporaneous sales of the next most similar models.'' Saha Thai adds that this policy was followed in previous reviews in this proceeding, and that the Department should use the suggested model matches as submitted by Saha Thai.

Petitioners argue that the Department correctly resorted to CV, and is acting in accordance with longstanding Departmental policy in accordance with precedent of the Court of International Trade. Petitioners cite 19 U.S.C. 1677(16), which provides for only one foreign like product for each U.S. product sold. Petitioners contend that this provision sets up a hierarchy of three choices for foreign like product in order of preference and dictates that the foreign like product is the first category for which a determination may be made, indicating that once a foreign like product is established, that choice cannot be altered by the operation of the 90/60 window. The foreign like product cannot be different during different 90/60 day periods of the same review period.

Petitioners contend that 19 U.S.C. 1677(a)(4) directs the Department to apply constructed value whenever a duly chosen foreign like product cannot be used to determine normal value under section 1677(a)(1)(B). Citing *Color Television Receivers from the Republic of Korea* (58 FR 52262, 52263 (October 7, 1993)), petitioners assert that both the Department and the CIT have adhered strictly to the plain language of the statute by refusing to read into the hierarchy such factors as whether a sale is in the ordinary course of trade (see, *Cyanuric Acid and its Chlorinated Derivatives from Japan Used in the Swimming Pool Trade*, 49 FR 7424 (February 29, 1984), which was sustained in *Monsanto Co.* v. *United States*, 698 F. Supp. 275 (CIT 1988), at the same level of trade (citing *Timken Co.* v. *United States*, 673 F. Supp. 495 (CIT 1987) and *NTN Bearing Co.* v. *United States*, 747 F. Supp. 726, 736 (CIT 1990)), or whether the price is below the cost of production (citing *Antifriction Bearings from France et al.*, 57 FR 28360, 28373 (June 24, 1992)). The same considerations of statutory interpretation also prevent the 90/60 contemporaneity test from being insinuated into section 1677(16).

Petitioners hold that attaching the 90/60 contemporaneity test to section 1677(16) would not only be inconsistent with Departmental practice and the CIT, but would also reach beyond the scope of the Department's statutory authority. Petitioners state that the Department is bound by the plain language of the statute—a conclusion that it must base normal value on CV pursuant to 19 U.S.C. 1677b.

Department's Position: In this review, we used the following model match methodology: in the model match

program, we compared U.S. sales to contemporaneous home market sales of the comparison model that was physically ''most similar'' and which passed the 20 percent difmer test (which often resulted in an identical match). In the margin calculation program, we used the results of the model match program to merge a U.S. sale with the ''most similar'' home market sale within the 90–60 window. If no match was found, either because the model match program found no contemporaneous sale of an identical or similar product or because the appropriate home market sales failed the COP test, the U.S. sale was compared to CV.

We disagree with the respondents' contention that this methodology is a departure from ''established practice.'' Our model match methodology is consistent with our practice of determining the foreign like product based upon the similarity of the merchandise and resorting to CV only when the sale of the identical or most similar merchandise fails our COP test. *See, e.g., Antifriction bearings (Other than Tapered Roller Bearings and Parts Thereof from France et al.*, 58 FR 39729, 39764–66 (July 26, 1993). We also disagree with the respondents' contention that we must use the ''next most similar'' match before resorting to CV. Section 771(16) of the Act provides the Department with discretion to determine which merchandise (foreign like product) may be reasonably compared to subject merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to merchandise sold in the United States. The model match methodology we used in this review identified the ''most similar'' foreign like product taking into account the contemporaneity of the match. After identifying the ''most similar'' foreign like product, we apply the cost test under § 773(b) because the COP test should not be part of the basis for determining the ''most similar'' foreign like product. Section 771(16) does not direct us to the ''next most similar'' foreign like product if the first match is sold below cost. Therefore, we use CV when the ''most similar'' foreign like product is sold below cost. This methodology, which the Court of International Trade affirmed in *Federal Mogul Corp.* v. *United States*, 918 F. Supp. 386, 396–97 (CIT 1996), is consistent with the requirement in section 771(16) that the determination of the foreign like product be based solely upon the similarity of the merchandise and not whether the merchandise is sold below cost. The methodology used in *Crankshafts from the United Kingdom* was a deviation from our standard practice that was necessitated by the unique model matching issues and home market price fluctuations which occurred in that review. The facts on the record in this review do not warrant a similar deviation from our standard practice.

Although petitioners agree with the Department's use of CV, we disagree with petitioners' contention that section 771(16) provides for only one foreign like product for each U.S. product sold throughout the POR. Under the URAA, the term ''foreign like product'' was substituted for ''such or similar'' to conform with terminology used in the Antidumping Agreement. By this substitution Congress did not intend to affect the interpretation or practice followed by the Department in administering the antidumping duty statute. SAA at 820. Accordingly, depending on the nature of the product subject to examination, there may be various models that qualify as the ''foreign like product'' within the meaning of section 771(16) just as there may be various models of ''similar'' merchandise under the pre-URAA statute. Nor do we agree, as petitioners' suggest, that the 90/60 day test is irrelevant to selecting the foreign like product under section 771(16). The Department must identify an appropriate universe of transactions from which it can select the best model match. Because section 773(a)(1) requires that price comparisons be based on reasonably contemporaneous sales, it is the Department's practice to select matches from the universe of contemporaneous sales. The cases cited by the petitioners in support of its proposition do not demonstrate that this application of our contemporaneity test is unreasonable because none of those cases involved the question of an appropriate comparison based on the date of sale.

Comment 10: Saha Thai contends that the Department improperly deducted packing costs from the net U.S. price and from net home market price, but also added U.S. packing costs to normal value, thus comparing an unpacked U.S. price to a packed price in the home market. Petitioners agree with Saha Thai that U.S. packing should not be deducted from U.S. price.

Department's Position: The Department agrees that in accordance with section 772(c)(1), U.S. packing should not be deducted from U.S. price. U.S. packing should instead be added to normal value in accordance with section 773(a)(6)(A).

Comment 11: Saha Thai alleges that the Department's margin program erroneously compares a total cost of production (TOTCOM) inclusive of packing costs to a net price (NPRICOP) from which packing costs have been deducted. The Department should have compared RCOP (total COP exclusive of packing) to NPRICOP.

Petitioners disagree with Saha Thai, and argue that section 1677(b)(3)(C) specifically requires the cost of packing be included in the cost of production for comparison to the home market price.

Department's Position: In accordance with section 773(b)(3)(C), we have included packing costs in our calculation of the cost of production. Consistent with our practice described in Comment 8, we have included these packing expenses costs in NPRICOP to obtain an ''apples-to-apples'' comparison between TOTCOP and NPRICOP.

Comment 12: Saha Thai argues that the Department erred in calculating export price by deducting U.S. direct selling expenses. Respondent contends that U.S. direct selling expenses should have been added to the normal value as a circumstance of sale adjustment, citing *Koyo Seiko Co.*, v. *United States,* 796 F. Supp. 1526, 1531 (CIT 1992).

Petitioners disagree with Saha Thai's assertion that U.S. direct selling expenses should be added to normal value as a circumstance of sale adjustment. Petitioners contend that it has been long-standing Departmental policy to deduct direct selling expenses from U.S. price (export price) rather than add it to FMV (normal value), as proposed by Saha Thai. According to petitioners, the court reviewed the matter *de novo* after finding out that, because it was the Department's policy, it would have been futile for Koyo Seiko to have raised the issue before the agency. Moreover, petitioners hold that the court's position on direct selling expenses was subsequently vacated by the CIT after remand, citing *Koyo Seiko Co.* v. *United States*, 806 F. Supp. 1008 (CIT 1992).

Department's Position: As stated in *Stainless Steel Cookware from the Republic of Korea; Final Results of Administrative Review*, 59 FR 10788 (March 8, 1994), it is the Department's policy, when purchase price (EP) sales are examined, to add U.S. direct selling expenses to FMV (NV) as a circumstance-of-sale adjustment, pursuant to section 773 of the Act. The URAA did not change this policy. The *Koyo Seiko* decisions are irrelevant to this determination because these cases involved exporter's sales price (CEP) sales which are not subject to

examination in this review. Therefore, we have corrected this error.

Comment 13: Saha Thai contends that the Department erred in deducting inventory carrying expenses from net price for purposes of comparing selling price with cost of production. Saha Thai argues that this value is included in its reported general and administrative expenses and is included in its total cost of production. Therefore, the Department should not have deducted inventory carrying expenses from the net price before comparing that net price to Saha Thai's cost of production. Saha Thai holds that this deduction is contrary to the Department's policy (*see* Import Administration Policy Bulletin, No. 94.6, March 25, 1994). Petitioners did not comment on this issue.

Department's Position: The Department agrees with respondent because the deduction of inventory carrying expenses from net price does not result in an apples-to-apples comparison. The Department does not make adjustments for imputed costs in comparing prices to COP. To deduct inventory carrying expenses from the net price without a similar adjustment to total cost of production would distort the Department's cost test.

Comment 14: Saha Thai argues that the Department double counted respondents' interest expense for both total cost of production and constructed value. The Department created the variable INTEX, which represents Saha Thai's net interest expense as a percentage of its total cost of goods sold. Saha Thai holds that its actual interest expense is already reported in its general and administrative expenses. This addition of an imputed interest factor, according to respondent, is in violation of section 773(e)(2)(A) of the Act, which requires that the Department base selling, general, and administrative expenses on ''actual amounts incurred and realized'' by the respondent. In computing CV these costs may not be based on imputed amounts or an arbitrary minimum.

Petitioners contend that it is appropriate for the Department to use the higher INTEX value as a substitute for Saha Thai's reported interest expense as an adverse inference because Saha Thai failed to report the correct sales for the POR.

Department's Position: The Department agrees with respondents, because the inclusion of the imputed interest expense factor INTEX has the effect of double counting Saha Thai's reported, and verified, interest expense. We have deleted the variable INTEX from the margin calculation program.

Comment 15: Saha Thai argues that the Department erred in computing the import-specific assessment rate by multiplying the margin by U.S. quantity twice. Petitioners did not comment on this issue.

Department's Position: We agree with respondent, and this error as been corrected.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Saha Thai/ SAF	3/1/94–2/28/95	5.95
Pacific Pipe Co.	3/1/94–2/28/95	(1)

[1] No sales during the review period.

The Department shall determine, and the Customs Service shall access, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated or reviewed 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 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 15.67 percent, all other rates established in the LTFV investigation. See *Final Determination and Antidumping Duty Order: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* (51 FR 8341, March 11, 1986).

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 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 incurred and the subsequent assessment of double antidumping duties.

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 23, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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National Institute of Standards and Technology

Announcement of an Opportunity To Join a Cooperative Research and Development Consortium for CD-Metrology Below 0.25 Microns

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology invites interested parties to attend a meeting on November 12, 1996 to discuss setting up a cooperative research consortium. The goal of the consortium is to achieve commercially available reference standards to support CD-metrology below 0.25 microns. Parties participating in the consortium will be loaned a premeasured prototype sample for evaluation.

The program will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with