contract price as determined by the Department.

Weighting

The Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA), to weight the spot and long-term components of the observed price. In this instance, we have used purchase data from the period 1993–1996. During this period, the spot market accounted for 79.31 percent of total purchases, and the long-term market for 20.69 percent.

As in previous determinations, the Department used the Energy Information Administration's (EIA) *Uranium Industry Annual* to determine the available average spot-and long-term volumes of U.S. utility purchases. We have updated the data to reflect the period 1993 through 1996. The EIA has withheld certain business proprietary contract data from the public versions of the *Uranium Industry Annual 1993, Uranium Industry Annual 1994, Uranium Industry Annual 1995* and the *Uranium Industry Annual 1996.* The EIA, however, provided all business proprietary data to the Department and the Department has used it to update its weighting calculation.

Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is $12.35. This reflects an average spot market price of $11.51, weighted at 79.31 percent, and an average long-term contract price of $15.54, weighted at 20.69 percent. The increase in the observed market price from our preliminary determination reflects the addition of one contract, as discussed below, and revised calculation methodology. Since this price is between $12.00/pound and $13.99/pound as defined in Appendix A of the suspension agreement with Kazakstan, as amended, Kazakstan receives a quota of 1,000,000 pounds for the period October 1, 1997, to September 30, 1998. This price will also be used, as appropriate, according to Section 2.A. of the Uzbek agreement.

Comments

Consistent with the February 22, 1993, letter of interpretation, the Department provided interested parties the preliminary price determination for this period on September 17, 1997. One interested party submitted comments.

Comment 1: The Ad Hoc Committee of Domestic Uranium Producers (the Miners) requested that the Department include Uzbekistan in the price calculation.

Department's Position: The Department agrees with the Miners and on September 29, 1997, placed the price calculation on the Uzbek record and served counsel. (*See* Memo to the File from Cindy Sonmez, September 29, 1997.)

Comment 2: The Miners indicated that the Department failed to include an additional U.S. Base Price Indicator month in its calculations of long-term price.

Department's Position: The Department agrees with the Miners and has included the relevant month under the ''UPIS Indicators'' section. Further, in accordance with our practice, the Department simple-averaged the relevant months, and this change has been reflected on the ''Simple Average of UPIS and Contract Price.''

Comment 3: The Miners requested the Department to collect more information on the reported prices of certain contracts to ascertain that the contract prices do not reflect unusual sale circumstances.

Department's Position: The Department reviewed these contracts and removed one contract from its long-term price calculations as it was a duplicate. The Department also confirmed with the submitting party that the reported contract prices used in our price calculations are accurate.

Comment 4: Petitioners request that the Department weight-average the price on multi-year contracts according to yearly delivery volumes.

Department's Position: The Department agrees with petitioners and has adjusted our long-term contract price methodology accordingly. In order to arrive at the contract price, the Department derived weighted-average price factors for each year of the contract period and added each individual factor. The Department calculated the weighted-average price factor by multiplying the deflated price for each contract year by the nominal volume of the contract year over the total nominal volume of the contract.

Dated: October 6, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Antidumping Countervailing Duty—Group III.

[FR Doc. 97–27472 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[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.

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

SUMMARY: In response to requests by Thai Union Steel Co., Ltd. (''Thai Union''), Saha Thai Steel Pipe Company, Ltd. (''Saha Thai''), and its affiliated exporter S.A.F. Pipe Export Co., Ltd., (''SAF'') (collectively ''Saha Thai''), and two importers, Ferro Union Inc. (''Ferro Union''), and ASOMA Corp. (''ASOMA''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers the following manufacturers/exporters of the subject merchandise to the United States: Saha Thai and Thai Union. The period of review (''POR'') is March 1, 1995 through February 29, 1996. We received comments on the preliminary results and rebuttal comments from the petitioners and respondents.

Based on our analysis of comments received, we have applied total adverse facts available to both Saha Thai and Thai Union. Therefore, with respect to both respondents, the final results do not differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 16, 1997.

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1398 or (202) 482–3362, respectively.

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 (hereinafter, ''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 codified at 19 CFR part 353 (April 1997). Although the Department's new regulations codified at 19 CFR part 351 (62 FR 27296, May 19, 1997) (''Final Regulations'') do not govern this administrative review, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 4, 1996, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1995 through February 29, 1996 (61 FR 8238). Timely requests for an administrative review of the antidumping order with respect to sales by Saha Thai/SAF and Thai Union during the POR were filed by Thai Union, and jointly by Saha Thai, SAF, Ferro Union, and ASOMA. The Department published a notice of initiation of this antidumping duty administrative review on April 25, 1996 (61 FR 18378).

On May 14, 1996, Saha Thai, SAF, Ferro Union, and ASOMA sought to withdraw their request for review and requested that the Department terminate the review with respect to sales by Saha Thai/SAF during the POR. The domestic interested parties, Allied Tube & Conduit Corporation, Laclede Steel Company, Sawhill Tubular Division of Armco, Inc., and Wheatland Tube Company, (''petitioners''), objected to partial termination of the review on the grounds that, on March 29, 1996, they had submitted to the Department a timely request for review of sales by these companies and served Saha Thai with a copy of this request. Although there is no official record of petitioners' request, because the reason for the filing error is unclear and given the remedial nature of the antidumping law and the fact that Saha Thai received notice of petitioners' request, the Department elected to continue the ongoing review of these sales. *See Memorandum to Robert S. LaRussa from Stephen J. Powell,* July 11, 1996.

On May 24, 1996, the petitioners requested that the Department verify the responses of both Saha Thai and Thai Union.

The Department determined that it was not practicable to complete this review within statutory time limits, and, pursuant to section 751(a)(3)(A) of the Act, extended the time limit for the preliminary results of the review on November 1, 1996. On April 10, 1997, the Department published in the **Federal Register** (62 FR 17590) the preliminary results of its administrative review of this antidumping order covering the period March 1, 1995 through February 29, 1996. On August 8, 1997, pursuant to section 751(a)(3)(A) of the Act, the Department extended the time limit for the final results of the review.

On August 21, 1997, the Department requested Saha Thai to submit onto the record of this segment of the proceeding certain information concerning its ownership and management structure and the ownership interests of its directors that Saha Thai had placed on the record of the subsequent segment (the March 1, 1996–February 28, 1997 POR). Saha Thai complied with this request in a timely manner. Saha Thai submission August 25, 1997.[1] Both Saha Thai and petitioners filed comments on Saha Thai's submission.[2]

The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this administrative review are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 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 HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive. This review covers sales of these products by Saha Thai/SAF and Thai Union during the period March 1, 1995 through February 29, 1996.

[1] On two occasions, Saha Thai resubmitted portions of this filing as public documents after partially withdrawing its claims of business proprietary treatment. *See* Saha Thai submission September 8, 1997 and Saha Thai submission October 2, 1997.

[2] Both sets of comments were submitted on September 8, 1997. Saha Thai resubmitted the business proprietary version of its comments as a public document. *See* Saha Thai submission October 1, 1997.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondents, Saha Thai and Thai Union, by using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant purchase and financial records, and analysis of original documentation used by Saha Thai and Thai Union to prepare responses to requests for information from the Department. Our verification results are outlined in the verification reports. *See* Memoranda to the file from Theresa L. Caherty, John B. Totaro and Dorothy A. Woster, April 4, 1997 (''Cost Verification Reports'').

Facts Available

Saha Thai

We preliminarily determined that the use of total adverse facts available was appropriate with respect to Saha Thai's submitted data in accordance with section 776(a)(2)(C) and section 776(b) of the Act because we found that Saha Thai had significantly impeded the review by failing to comply with our requests for complete information on affiliates. In response to the Department's requests that Saha Thai identify all affiliated companies involved in the production or sale of the subject merchandise, the record demonstrates that Saha Thai failed to disclose its affiliation with Thai Tube Co., Ltd. (''Thai Tube''), a producer of subject merchandise, and three customers, two of which are resellers of subject merchandise. Saha Thai also failed to provide complete information concerning ownership and management of the Siam Steel Group. *See Memorandum to Robert S. LaRussa from Joseph A. Spetrini,* March 31, 1997 on file in the Central Records Unit, Room B099 of the main Commerce Building.

Section 771(33) of the Act defines ''affiliated persons'' for purposes of our antidumping analysis. Section 771(33)(A) of the Act defines ''affiliates'' as ''[m]embers of a family including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.'' Under the Act, members of a family are viewed as a unit, e.g., an affiliated person. Further, the term ''including'' in this definition indicates that the list of family relations is illustrative, not finite.

Section 771(33)(F) defines affiliates as ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' The statutory definition of affiliated persons in section 771(33) of the Act states that ''control'' exists

where one person ''is legally or operationally in a position to exercise restraint or direction'' over another person. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (''SAA''), H.R. Doc. 316, Vol.1, 103d Cong. (1994), indicates that stock ownership is not the single evidentiary factor for determining whether a person is in a position of control, and that control may also be established through corporate or family groupings. SAA at 838. Thus, the statute and the SAA expressly envision affiliation based on family stockholdings, consistent with our prior practice. *See, e.g., Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42853 (August 19, 1996) (common stockholdings of particular families found to control one or more corporate entities). Moreover, as stated in the final regulations, the Department intends to scrutinize closely issues of affiliation by family groupings. Final Regulations, 62 FR at 27380. The Department has analyzed the information on affiliation on the record in this administrative review, and determined that Saha Thai and certain home market customers, service providers, and producers of the subject merchandise to be affiliated under section 771(33)(F) by virtue of common control by several families involved in the ownership and management of Saha Thai.

Members of six families hold varying percentages of Saha Thai's shares and hold all of the seats on Saha Thai's board of directors. Several of Saha Thai's directors also hold positions as officers and managers in the company: Limsiam Ampapankit, Chairman of the Board; Somchai Karuchit, Managing Director; Somchai Lamatipanont, Deputy Managing Director; and Kim Hua Sae Heng, Financial Director. Saha Thai September 8, 1997 submission. Saha Thai's affiliations are established through the common control and financial holdings of these families.

We find that Saha Thai is affiliated with Thai Tube and Thai Hong Steel Pipe Import Export Co., Ltd, (''Thai Hong''), producers of the subject merchandise, under section 771(33)(F) of the Act by virtue of common control by the Lamatipanont family. Somchai Lamatipanont is the Deputy Managing Director of Saha Thai; under the circumstances in this case, we find this places him in a position of legal and operational control of Saha Thai. The Lamatipanont family is in a position of legal and operational control in Thai Tube and Thai Hong by virtue of the Lamatipanont family's substantial ownership interests in both companies and the positions of family members as officers and directors. Therefore, the Lamatipanont family is legally and operationally in a position of control over Thai Tube, Thai Hong, and Saha Thai. Therefore, these companies are affiliated under section 771(33)(F) of the Act.

We also find that Saha Thai is affiliated with three of its home market customers by virtue of common control by three families in positions of control within Saha Thai. These customers are referred to in this notice as Company A, Company B, and Company C for business proprietary reasons. Two of these customers (Companies A and B) are resellers of Saha Thai pipe. In the circumstances of this case, we find that three Saha Thai officers, Kim Hua Sae Heng—Financial Director, Somchai Lamatipanont—Deputy Managing Director, and Limsiam Ampapankit—Chairman of the Board, are in positions of legal and operational control of Saha Thai due to their positions in the Saha Thai management hierarchy. Saha Thai September 8, 1997 QR. In addition, these officers' families each hold substantial ownership interests in Saha Thai. The officers' families are also in positions of legal and operational control in Company A, Company B, and Company C, respectively, by virtue of the family members' ownership interests in these companies. Saha Thai August 25, 1997 QR. Therefore, Saha Thai and Company A are under common control of the Sae Heng/Ratanasirivilai family, Saha Thai and Company B are under common control of the Lamatipanont family, and Saha Thai and Company C are under common control of the Ampapankit family. Thus, Saha Thai is affiliated with each of these customers within the meaning of section 771(33)(F) of the Act.

Finally, we find that the Karuchit/Kunanantakul family also is in a position of legal and operational control of the Siam Steel Group companies by virtue of the Karuchit/Kunanantakul family members' positions as directors and the family's ownership interests in these companies. For example, Somchai Karuchit is the Managing Director of Saha Thai, which places him in a position of legal and operational control of Saha Thai. Also, Mr. Karuchit is the Chairman of another Siam Steel Group company, Siam Steel International, Saha Thai's largest shareholder. The record evidence demonstrates that the Karuchit/Kunanantakul family controls the Siam Steel Group companies, therefore we consider the Siam Steel Group to be a corporate or family grouping as envisioned by the regulations and the SAA, which establishes an affiliation among all Siam Steel Group companies under section 771(33)(F) of the Act. On this basis, we find that Saha Thai is affiliated under section 771(33)(F) of the Act with the Siam Steel Group, which include Company D, a Saha Thai customer, and Company E, a pipe producer, by virtue of common control by the Karuchit/Kunanantakul family.

Despite our requests to do so, Saha Thai failed to identify these affiliated producers and customers in its questionnaire responses. Rather, the Department discovered information establishing these affiliations late in the administrative proceeding. In fact, as recently as weeks before these final results we received additional information from Saha Thai at the Department's request which further confirmed our preliminary findings of affiliation. Moreover, although Saha Thai identified members of the Siam Steel Group as potential affiliates, Saha Thai did not provide complete information concerning the management and ownership of the member companies when requested to do so. In light of these circumstances, our preliminary results in which we assigned a dumping margin to Saha Thai based on total adverse facts available remain unchanged.

Thai Union

We preliminarily determined that the use of total adverse facts available was appropriate with respect to Thai Union's submitted data in accordance with section 776(a)(2)(D) and section 776(b) of the Act because we found that Thai Union provided cost of production (COP) data that could not be verified and because Thai Union failed to reconcile its reported costs with its normal books and records. We have not changed the preliminary results based on comments received (see Comment 5 below); therefore, for these final results, we have assigned a dumping margin to Thai Union based upon total adverse facts available.

Analysis of Comments Received

The petitioners, Saha Thai, and Thai Union submitted case briefs on May 12, 1997, and rebuttal briefs on May 19, 1997. A public hearing was held on June 6, 1997. The comments submitted by petitioners and respondents that relate to the calculation of margins are not addressed in this notice because the final margins for this administrative review are based on total adverse facts available.

Comment 1

Saha Thai argues that the Department based its preliminary results upon a misapprehension of the pertinent facts with respect to parties deemed affiliated with Saha Thai. Saha Thai claims that the Department's statement in the preliminary results that Mr. Somchai Lamatipanont is Chairman of Saha Thai and that members of the Chairman's family manage Thai Tube, is factually incorrect. Saha Thai states that Mr. Somchai Karuchit, and not Mr. Somchai Lamatipanont, is Chairman of Saha Thai. Saha Thai also notes that Mr. Lamatipanont, and not Mr. Karuchit, has a brother who is the managing director of Thai Tube. Furthermore, Saha Thai argues that Mr. Lamatipanont is a director of Saha Thai. Saha Thai claims that it identified the family relations of Mr. Somchai Lamatipanont having a shareholding interest in Saha Thai and Thai Tube in its response to the Department's second post-verification questionnaire dated March 27, 1997. Saha Thai further states that neither Mr. Karuchit nor his cousins, Mr. Wanchai Kunanantakul and Mr. Anantachai Kunanantakul, have direct or indirect interest in Thai Tube, and no family members are involved in the management of Thai Tube. Finally, Saha Thai notes that ownership of Saha Thai is dispersed such that no family or director controls Saha Thai by virtue of controlling the board. Saha Thai contends that because of its fractionated interests represented by multiple directorships and shareholdings, Saha Thai's directors can only control Saha Thai when acting ''together,'' not as individuals.

Saha Thai disagrees with the Department's finding that the familial relationship between Mr. Somchai Lamatipanont and his brother Mr. Surasak Lamatipanont, Thai Tube's managing director, creates an affiliation between Saha Thai and Thai Tube. Moreover, Saha Thai argues that Congress, when enacting the changes to section 771(33) under the Uruguay Round Amendments Act, did not include a provision which holds that an affiliate of an affiliate is an affiliate.

Saha Thai argues that, at the time it completed the Department's questionnaires, it had no direct knowledge of the operations of Thai Tube or Thai Tube's relationship to Thai Hong. Saha Thai also reiterates that it has no details regarding the terms of Thai Hong's bankruptcy in January 1992, and does not know why the 1991 *Iron and Steel Works of the World* lists Thai Hong as being located at the same address as Thai Tube, except to suggest that some of Thai Hong's personnel may have been transferred to Thai Tube. Saha Thai notes that in public filings made with the Thai Ministry of Commerce dated March 1997, Thai Hong was located at a different address than the alleged address of Thai Tube. Finally, Saha Thai holds that while there is some overlap in the directors of Thai Hong and Thai Tube, the ownership is quite different.

Saha Thai also argues that even if Saha Thai and Thai Tube are considered affiliated, there is substantial evidence on the record to demonstrate that collapsing them is inappropriate. Saha Thai argues that the Department considered only the extent to which the two companies have common family members in its decision to collapse Saha Thai with Thai Tube (see Memorandum from Joseph Spetrini to Assistant Secretary Robert LaRussa, March 31, 1997). Saha Thai notes that the Preamble to the Final Regulations states at 27345, ''[C]ollapsing requires a finding of more than affiliation.'' Moreover, Saha Thai notes that the Court of International Trade (CIT) has required the Department to undertake a serious analysis of the potential for price manipulation before collapsing two parties. Saha Thai further recognizes that the Department's general practice, as approved by the CIT in *Nihon Cement Co.* v. *United States,* 17 CIT 400 (1993), is not to collapse related parties. Saha Thai argues that the preliminary results in this case contains no substantive analysis of the potential for price manipulation which the Department must undertake before deviating from its general practice of calculating individual rates.

Saha Thai concludes that the application of adverse facts available to Saha Thai is inappropriate. Saha Thai argues that the Department may resort to the facts available only when a respondent has not complied with a request for information. Saha Thai contends that when the Department neglects to request information that it later finds necessary for its determination, it should not resort to best information available, but should issue a supplemental request for information.

In its supplemental comments, Saha Thai argued that Saha Thai is managed by its Managing Director, Mr. Somchai Karuchit, and that other individuals involved in Saha Thai are given titles and positions to accommodate the legal corporate requirements that different individuals hold each of various corporate office positions. Saha Thai continues that both day-to-day operating decisions and major management decisions are generally made by Mr. Karuchit, and that while major management decisions are subject to approval by the board, neither the deputy managing director nor any other officer or director has any special role in obtaining or ensuring such approval.

Saha Thai also asserted in its supplemental comments that because Mr. Surasak Lamatipanont and Mr. Somchai Lamatipanont are not lineal descendants, Saha Thai and Thai Tube are not affiliated by virtue of their familial ties.

Petitioners counter that the Department correctly based the preliminary results on the facts available and should do so for the final results as well. Petitioners hold that the facts available decision was based on three omissions by Saha Thai in reporting its affiliated parties: first, Saha Thai failed to report as affiliated parties the customers that are owned or controlled by members of the Saha Thai board of directors who are also shareholders in Saha Thai (Companies A, B and C) (see Comment 2, below); second, Saha Thai failed to disclose that one of the members of the Siam Steel Group, to which Saha Thai is affiliated (Company E), is a producer of subject merchandise (see Comment 4, below); and third, family members of a Saha Thai director who is also the largest individual shareholder of Saha Thai manage and control Thai Tube, a Thai producer of subject merchandise. Petitioners argue that in addition to not reporting information about its relationship to Thai Tube, Saha Thai committed an error of omission by responding to the Department's questions about Thai Hong without mentioning Thai Hong's successor, Thai Tube. Petitioners also note that Saha Thai failed to disclose that it purchased pipe from other Thai resellers or producers for sale (see Comment 3, below). Petitioners argue that the Department provided Saha Thai with numerous opportunities to list all of its affiliated parties, which Saha Thai failed to do. Petitioners state that these omissions indicate Saha Thai's intent to obfuscate its relationships with affiliated companies.

Petitioners argue that the Department's incorrect identification of Somchai Lamatipanont as the Chairman of Saha Thai was not the ''linchpin'' of the preliminary results, and it does not oblige the Department to change its preliminary results. Because Somchai Lamatipanont is (1) an officer and director of Saha Thai, and (2) the ''scion'' of the Lamatipanont family ownership group, one of only six families participating in the control of

Saha Thai, petitioners argue that he is ''one of the most important members of the small group of directors and shareholders who control Saha Thai'' and ''both 'legally and operationally in a position to exercise direction or restraint' over Saha Thai, whether directly or indirectly, in concert with other directors and shareholders from the small group of control families in this closely held company.''

Petitioners argue that Saha Thai is affiliated with Thai Tube within the meaning of section 771(33) (F) and (G) of the Act. Petitioners argue that operation of Saha Thai requires the concerted action of at least several to all of the six families that control Saha Thai's stock. Petitioners then infer that each of the six families, separately and together, control Saha Thai. The families' representatives on the board are each legally or operationally in a position to exercise restraint or direction over Saha Thai, either directly or indirectly. Therefore, the Lamatipanont family, led by Mr. Somchai Lamatipanont, is part of the control group of Saha Thai. In addition, petitioners argue that Saha Thai clearly controls Thai Tube and its predecessor, Thai Hong. Petitioners note that information on the record indicates that two members of the Lamatipanont family are the only directors of Thai Tube, and that one member of the family is the managing director of Thai Tube. Thus, petitioners reason that Lamatipanont family members who are affiliated under section 771(33)(A) are legally and operationally in a position to exercise direction or restraint over both Saha Thai and Thai Tube, and that this establishes affiliation under section 771(33)(F)—affiliation by common control of the Lamatipanont family. In addition, petitioners argue that the Department does not have complete information about the extent of management or ownership of Thai Tube by other Lamatipanont family members or by the other families who control Saha Thai, if any.

Petitioners argue that Saha Thai errs in inferring that because the Lamatipanont family does not control 50% or more of the voting shares or the board of directors of Saha Thai, the family cannot exercise control over Saha Thai. This inference, petitioners argue, is not supported by the statute. Petitioners cite the SAA at 838, which states that control can exist ''even in the absence of an equity relationship,'' and the statute which defines control as one person ''legally or operationally in a position to exercise restraint or direction'' over another person. Petitioners reason that this phrase in the statute does not mean that the person exercising control must be able to compel the actions of another person or entity in every instance, but that the ''controlling'' person or entity must be able to influence the actions of the entity controlled by virtue of the controlling entity's or person's position. Petitioners conclude that, in the case of Saha Thai, where no one director, shareholder or family of shareholders can dictate the course of Saha Thai, each of the directors, ''control families'' and shareholders, including Somchai Lamatipanont, can exercise control as defined in the statute.

Therefore, petitioners argue, Saha Thai should have placed information concerning its relationship with Thai Tube on the record in response to the Department's questionnaire requests for information on entities affiliated through stock ownership and by means other than stock ownership. Petitioners argue that evidence on the record shows that Saha Thai made a tactical decision not to report the full extent of its affiliations, including its affiliation with Thai Tube. Petitioners state that Saha Thai's failure to provide requested data on affiliation should lead to the application of facts available. If there was ambiguity as to the information requested by the Department, petitioners argue that Saha Thai should have resolved this ambiguity through consultation with the Department as directed by the questionnaire itself.

Petitioners then argue that the Department was unable to perform a collapsing analysis of Saha Thai and Thai Tube because Saha Thai failed to provide the requested information about affiliates. Because the Department could not determine whether sales from Thai Tube were necessary for its calculation of normal value or export price, there is no assurance that the Department has reviewed all of the U.S. and home market sales that should be attributed to Saha Thai. Petitioners state that because the Department was unable to collect, place on the record, and verify the information necessary to perform a collapsing analysis, Saha Thai's contention that evidence on the record indicates that collapsing is inappropriate is inaccurate.

In summary, petitioners argue that the Department cannot calculate normal value or export price because Saha Thai's reported information on affiliates is incomplete. In addition, petitioners argue that Saha Thai purposefully failed to discuss Thai Tube when the Department requested information after verification about Saha Thai's affiliation with Thai Hong. Petitioners argue that Saha Thai did not act in good faith by failing to identify Thai Tube as the successor to Thai Hong. Petitioners argue that Saha Thai failed to provide requested information on its affiliations by the deadlines set by the Department, thus impeding the proceeding, and that Saha Thai's incomplete responses meet all of the statutory factors for resorting to facts available. In addition, petitioners assert that an adverse inference is warranted because of Saha Thai's failure to act to the best of its ability to provide information on affiliates. Finally, petitioners argue that the Department should apply a single dumping margin to Saha Thai, Thai Tube, and Saha Thai's affiliated producer of PVC-coated water pipe (Company E) (see comment 4, below).

Department's Position

As discussed above in the *Facts Available* section, the definition of affiliated persons in the Act includes two (or more) companies under common control of a third entity (section 771(33)(F)). The Act states that ''control'' exists where one person ''is legally or operationally in a position to exercise restraint or direction'' over another person, section 771(33). The SAA indicates that stock ownership is not the single evidentiary factor for determining whether a person is in a position of control, and that control may also be established through corporate or family groupings. SAA at 838. We, therefore, disagree with Saha Thai's assertion that no family can be found to ''control'' Saha Thai under section 771(33), and that Saha Thai cannot be found to be affiliated with another company by virtue of common ownership interests of a single family. We find that based on the particular facts of this case, there is sufficient evidence on the record to find Saha Thai, Thai Hong, and Thai Tube to be affiliated under section 771(33)(F) by virtue of common control by the Lamatipanont family.

In the preliminary results, our determination that Saha Thai and Thai Tube are under common control of the Lamatipanont family was based in part on an erroneous identification of Mr. Somchai Lamatipanont as Saha Thai's Chairman. However, while Mr. Somchai Lamatipanont is not Saha Thai's Chairman, information submitted on the record by Saha Thai after the preliminary results demonstrates that Somchai Lamatipanont is the Deputy Managing Director of Saha Thai. Saha Thai Supp. QR, September 8, 1997. Saha Thai argued in its case brief that Somchai Karuchit is the Managing Director of Saha Thai, while Somchai Lamatipanont is a member of Saha

Thai's board of directors. Saha Thai Case Brief, May 12, 1997, at 17. Saha Thai failed to note Mr. Lamatipanont's position as Deputy Managing Director, thereby mischaracterizing his role as merely a member of the board.

In its supplemental comments, Saha Thai asserted that Somchai Lamatipanont's title as Deputy Managing Director does not vest in him any managerial control over the day-to-day operations of the company. Saha Thai claims that this title was designated merely to fulfill legal requirements that different individuals hold each of the various corporate office positions. Saha Thai further claims that all day-to-day operating decisions and major management decisions (including those concerning financial issues) are made by Mr. Karuchit, the Managing Director, and therefore, Mr. Lamatipanont is not in a position of legal or operational control in Saha Thai. Saha Thai submission September 5, 1997 (revised public version submitted October 1, 1997).

While Saha Thai may be legally bound to assign a different individual to each of Saha Thai's corporate office positions, Saha Thai has offered no evidence to support its assertion that all such positions, with the exception of Managing Director, are devoid of any responsibility over either day-to-day operating decisions or major management decisions. As the officer second to the Managing Director, a Deputy Managing Director is normally in a position of control. Saha Thai's unsubstantiated, eleventh hour claims are insufficient to establish that a Deputy Managing Director has no legal or operational authority.

Moreover, based on the facts on the record, the Department maintains its finding in the preliminary results that the Lamatipanont family controls Thai Tube. Information submitted following the preliminary results confirms our preliminary finding: Surasak and Surangrat Lamatipanont are Thai Tube's only directors; Surasak Lamatipanont is Thai Tube's Managing Director; and the Lamatipanont family members have owned 48% of Thai Tube's common stock since 1992. August 25, 1997 QR, Exhibit 3; Saha Thai Case Brief, May 12, 1997, at 17. The Department therefore finds that Saha Thai and Thai Tube are affiliated by means of common control by the Lamatipanont family. (For a more detailed analysis of this issue, see the public version of the *Memorandum to the File,* October 7, 1997.)

We also disagree with Saha Thai's assertion in its supplemental comments that because Mr. Surasak Lamatipanont and Mr. Somchai Lamatipanont are not lineal descendants, Saha Thai and Thai Tube are not affiliated by virtue of their familial ties. Saha Thai submission September 5, 1997 at fn. 3 (revised public version submitted October 1, 1997). As discussed above, the plain language of section 771(33)(A) does not exclude uncles and nephews from the category of familial relations covered by this subsection. We therefore find Somchai Lamatipanont, Surasak Lamatipanont, and the other Lamatipanont family members involved in Saha Thai and Thai Tube to be members of a family group, affiliated under section 771(33)(A) of the Act.

We also conclude that the evidence on the record supports a finding of affiliation between Saha Thai and Thai Hong, another Thai pipe producer owned or controlled by members of the Lamatipanont family. After verification of Saha Thai, the Department obtained public information indicating Lamatipanont family management of Thai Hong, a respondent in an earlier segment of this proceeding (March 1, 1987—February 29, 1988 POR). We pursued the potential for affiliation between Saha Thai and Thai Hong raised by this public information by issuing a questionnaire inquiring about the nature of the relationship between Saha Thai and Thai Hong. Saha Thai's response explained that Surasak, Samarn, and Surang Lamatipanont controlled Thai Hong, but that the company had entered into bankruptcy. Saha Thai asserted that ''[t]o the best of Saha Thai's knowledge, Thai Hong never resumed operations after going bankrupt.'' Saha Thai response, March 12, 1997. On March 21, 1997, petitioners submitted public information stating that Thai Tube is the successor to Thai Hong.

Petitioners argue that, because Thai Tube is the successor to Thai Hong, Saha Thai was obligated to supply information on Thai Tube in response to the Department's questionnaire on Thai Hong. As described above, the Department finds that, based on the information on the record, Saha Thai and Thai Tube are ''affiliated persons'' as defined by section 771(33)(F) of the Act. However, contrary to petitioners' argument, we find that the record does not contain conclusive evidence that Thai Tube is the successor organization to Thai Hong. Petitioners submitted public information indicating that Thai Tube operates from the same address as Thai Hong, that Thai Tube's brand device is ''THS,'' and that Thai Tube ''was formerly known as Thai Hong Steel Pipe Co., Ltd.'' (March 21, 1997 submission, exhibit 1 and 2). Saha Thai submitted a certified statement from the Thai Ministry of Commerce—indicating its final decision on Thai Hong's bankruptcy in 1992—which provides a different address for Thai Hong's head office than that listed in any of the petitioners' sources. (March 12, 1997 submission).

Moreover, the Department has obtained public information indicating that both Thai Hong and Thai Tube were operating producers of steel pipe and tube during the POR. *See Memorandum to the File,* September 29, 1997. The information includes the audited 1995 balance sheet and income statement for Thai Hong, indicating the fact that Thai Hong is a manufacturer, exporter, and importer of steel pipe, and that as of April 1996, 98.75% of its shares were owned by individuals with the surname Lamatipanont. Because the POR covers most of 1995 (March 1, 1995 through February 29, 1996), and because the public financial information indicates that Thai Hong maintained inventories, received export compensation, paid out employee social welfare, and by all indications conducted business during 1995, the Department concludes that Thai Hong was operating as a manufacturer, importer, and exporter of the subject merchandise during the POR.

The same source that contained information on Thai Hong also lists Thai Tube Co., Ltd. as a manufacturer of steel pipe, states that Surangrat Lamatipanont is a Director of the company, and identifies three individuals with the surname Lamatipanont as holding 48% of Thai Tube's shares. The reliability of this information is corroborated by information obtained from the Thai Ministry of Commerce and submitted to the Department by Saha Thai. Saha Thai submission, August 25, 1997. Because public information on the record of this review indicates that, during the POR, Thai Hong was an active producer of the subject merchandise with a substantial ownership interest held by members of the Lamatipanont family, the Department finds that Saha Thai and Thai Hong are affiliated under section 771(33)(F) of the Act by means of common control by the Lamatipanont family. The Department therefore concludes that Saha Thai failed in its obligation to report complete information on affiliated parties, in particular, Thai Hong, a producer of the subject merchandise.

These findings of affiliation support the Department's determination to resort to adverse facts available in this review. Information establishing Somchai Lamatipanont's position as the Deputy Managing Director of Saha Thai was submitted on the record at the

Department's request several weeks before the deadline for these final results. This information is yet another indication supporting the ability of the Lamatipanont family to control Saha Thai. This information, as well as facts confirming the Lamatipanont family's ownership and control of both Thai Tube and Thai Hong, confirms the appropriateness of our preliminary results determination that Saha Thai impeded this review by failing to fully disclose its affiliated parties in a timely manner. Saha Thai's failure to identify Thai Tube and Thai Hong as affiliated parties in response to the Department's questionnaires inhibited our inquiries into its relationships with these companies. Saha Thai should have identified these producers as affiliates or potential affiliates, as it did with the Siam Steel Group. If it was uncertain as to the Department's interpretation of the ''affiliated persons'' definition, Saha Thai should have contacted the Department and requested clarification. Saha Thai never made such a request. As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States,* 641 F.Supp. 31, 39–40 (CIT 1987). Saha Thai failed to do so. Like the best information available rule under the pre-URAA statute, section 776(a) of the Act serves the same purpose of encouraging respondents to provide timely, complete, and accurate responses to the Department's questionnaires. *See* SAA at 868–91. Therefore, in light of the circumstances surrounding the revelation of Saha Thai's affiliations, resorting to total adverse facts available is entirely consistent with the purposes of section 776 (a) and (b) of the Act. *See e.g., Olympic Adhesives, Inc.* v. *United States,* 899 F.2d. 1565 (Fed. Cir. 1990) (Commerce ''cannot be left to merely the largesse of the parties at their discretion to supply [Commerce] with information'').

Under Department practice, the affiliation between Saha Thai, Thai Tube, and Thai Hong, producers of subject merchandise, would invoke an inquiry to determine whether they should be treated as a single entity for purposes of calculating a dumping margin. *See* section 351.401(f) of the Final Regulations, 62 FR at 27410; *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42853 (August 19, 1996). Indeed, in the preliminary results, we made an adverse inference that Saha Thai and Thai Tube should be treated as a single entity for purposes of our antidumping analysis, and noted that we would continue to explore the affiliation issue for these final results. As a result of this examination, as described above, we obtained information both from Saha Thai and from public sources that establishes the affiliation between Saha Thai and Thai Tube and between Saha Thai and Thai Hong. However, because the information establishing the existence of these affiliations was placed on the record so late in the proceeding, we were unable to collect additional information or to analyze the propriety of collapsing these producers. We therefore disagree with Saha Thai's contention that substantial evidence on the record demonstrates that collapsing Saha Thai and Thai Tube is inappropriate. The record is incomplete and the Department is unable to perform the collapsing inquiry because Saha Thai impeded the investigation by failing to disclose relevant information concerning its affiliation with Thai Tube and Thai Hong in a timely manner. Therefore, for the final results the Department makes the adverse inference that it is appropriate to collapse Saha Thai, Thai Tube, and Thai Hong.

Comment 2

Saha Thai argues that neither the two resellers (Company A and Company B) nor the third home market customer (Company C) identified by the Department in the preliminary results as potential affiliates are affiliated with Saha Thai under section 771(33) of the Act. Saha Thai argues in its case brief that managerial and shareholding control of Saha Thai is divided among six, unrelated families, and that no individual family is in a position to control Saha Thai. Saha Thai also states in its rebuttal brief that no company or individual has the power to appoint a majority of directors in Saha Thai, and that the chairman of Saha Thai has no interest in the resellers Companies A and B or in Company C.

Saha Thai states that Company A is ''owned or controlled'' by one of these six families who own Saha Thai, the Ratanasirivilai family, which holds seats on Saha Thai's board and owns less than 50% of Saha Thai's shares. Saha Thai argues, however, that Company A is not affiliated with Saha Thai because the Ratanasirivilai family does not exercise control over Saha Thai. The other reseller, Company B, according to Saha Thai, is ''owned or controlled'' by Mr. Somchai Lamatipanont, a member of a different family with interests in Saha Thai who is a director and shareholder of Saha Thai. Saha Thai argues it is not affiliated with Company B because Mr. Lamatipanont is not in a position, individually or with other family members, to control Saha Thai. Finally, Saha Thai argues in its rebuttal brief that the home market customer identified in the Department's preliminary results as potentially affiliated, Company C, is not affiliated with Saha Thai for similar reasons.

According to Saha Thai, because no single Saha Thai director is legally or operationally in a position to exercise restraint or direction over Saha Thai, the fact that a Saha Thai director occupies that control position with respect to another corporation does not give rise to affiliation between Saha Thai and that other corporation. Saha Thai argues that common control as envisioned by section 771(33) (E) and (F) exists in circumstances ''in which the controlling party or control group in its entirety jointly exercises control over *both* corporations (or where a subset of the control group is in a position to and in fact does exercise control over *both* corporations.'' Saha Thai Case Brief at 34 (May 12, 1997). Saha Thai argues that it and Companies A and B are not under the common control of any of Saha Thai's directors or their families, and that Saha Thai is not affiliated with these companies under any subsection of section 771(33).

Petitioners argue that the directors and shareholders who control Saha Thai appear to control Companies A and B, the two resellers identified by the Department at verification and found to be potentially affiliated with Saha Thai in the preliminary results. They argue that the information the Department obtained at verification supports a determination that these customers are affiliated to Saha Thai, but because it was received so late in the proceeding, the issue could not be completely explored. Given the available information, petitioners argue that the Department was correct in determining for the preliminary results that Companies A and B are affiliated with Saha Thai. Specifically, petitioners argue that two companies may be affiliated within the meaning of section 771(33) (F) or (G) through a family grouping that participates in the control of both companies. Petitioners state that Saha Thai admitted Company A is owned or controlled by the Ratanasirivilai family, and that Company B is owned or controlled by Somchai Lamatipanont, a director and officer of Saha Thai, and therefore the control exercised over these resellers constitutes control under the statute. Petitioners contend that both the Ratanasirivilai family and the

Lamatipanont family are ''legally or operationally in a position to exercise restraint or direction'' over Saha Thai, and therefore also control Saha Thai under the statutory definition of control. Petitioners argue that these families participate in the small control group of persons who control Saha Thai, and possess the ability to influence the actions of the company through their directors and voting shares. Petitioners state that this degree of control is sufficient to satisfy the requirements of the statute.

Department's Position

With respect to Company A, Company B, and Company C, Saha Thai's home market customers (Companies A and B are also resellers) of subject merchandise, the Department finds that, based on the record evidence, there is a sufficient basis to conclude that Saha Thai and these companies are affiliated on the basis of common control under section 771(33)(F) of the Act. Saha Thai argued in its case and rebuttal briefs that common control can be found only where the ''control group is in a position to and in fact does exercise control over both corporations.'' We disagree. Evidence of actual control is not a prerequisite to finding ''control'' within the meaning of section 771(33) of the Act, which defines control in terms of the *ability* to control. As we stated in the Preamble in the proposed regulations and reiterated in the Final Regulations, the Department need not find evidence of actual control to satisfy the statutory definition of ''control.'' Proposed Rule, 61 FR at 7310; Final Regulations, 62 FR at 29297–98. Further, Saha Thai's argument is premised on the assumption that total or sole control is necessary for a finding of affiliation. Again, we disagree. Nothing in the statute or legislative history suggests that such a narrow interpretation is intended. To the contrary, the statutory definition of control encompasses both legal and operational control. Multiple persons or groups may be in control, individually and jointly, of a single entity, i.e., each has the ability to direct or restrain the company's activities. The facts in this case demonstrate that families that individually and jointly control Saha Thai also control Companies A, B and C.

First, Company B and Saha Thai are affiliated under section 771(33)(F) of the Act by virtue of common control by the Lamatipanont family. Saha Thai concedes that the record establishes that the Lamatipanont family has substantial ownership interest in Company B, sufficient to establish control. In addition, Mr. Somchai Lamatipanont is a member of the board of directors, is the Deputy Managing Director of Saha Thai, and the Lamatipanont family owns an equity interest in Saha Thai. Based on these facts, the Lamatipanont family is in a position to control Saha Thai. Therefore, we find that Saha Thai and Company B are under common control of the Lamatipanont family and Saha Thai was obligated to identify this customer as an affiliate in response to our questionnaires.

Similarly, the evidence on the record supports a finding that Company C and Saha Thai are affiliated under section 771(33)(F) of the Act by virtue of common control by the Ampapankit family. September 8, 1997 QR, Exh. 1. Saha Thai conceded that the record establishes that the Ampapankit family has substantial ownership interest in Company C, sufficient to establish control. The Ampapankit family also has an ownership interest in Saha Thai and Mr. Ampapankit is Chairman of the Board of Saha Thai, and is a director and shareholder of Saha Thai. *Id*. Mr. Ampapankit is, in fact, one of the three Saha Thai officers who, together with one of the other officials can bind Saha Thai with his signature. Saha Thai October 2, 1997 QR, Exh. 3 (Saha Thai Commercial Registration). Viewing the facts as a whole, the Ampapankit family is ''legally or operationally in a position to exercise restraint or direction'' over both Saha Thai and Company C. Therefore, we find that Saha Thai and Company C are affiliated and that Saha Thai was obligated to identify this customer as an affiliate in response to our questionnaires.

We also find that Saha Thai and Company A are under common control by the Sae Heng/Ratanasirivilai family. Saha Thai conceded that the record establishes that the Sae Heng/Ratanasirivilai family has substantial ownership interest in Company A, sufficient to establish control. The Ratanasirivilai family is also in a position to exercise restraint or direction over Saha Thai within the meaning of section 771(33) on the basis of the family's ownership interest, possession of two seats on Saha Thai's board of directors, and the fact that Mr. Sae Heng is Saha Thai's Financial Director. Saha Thai's September 8, 1997 QR at Exhibit 2. As is true of Mr. Ampapankit, Mr. Sae Heng is one of the three Saha Thai officers who, together with one of the other officials can bind Saha Thai with his signature. Saha Thai October 2, 1997, Exh. 3 (Saha Thai Commercial Registration).

Saha Thai also contends that the Ratanasirivilai family is not in a position of control over Saha Thai because the family as a whole holds less than a 50% ownership interest in Saha Thai. We disagree. The Sae Heng/Ratanasirivilai family owns substantial interests in both Saha Thai and Company A. These ownership interests, coupled with the additional facts described above, support a finding that the Sae Heng/Ratanasirivilai family controls Saha Thai as well as Company A. *See e.g. Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Administrative Review*, 62 FR 18486, 18490 (April 15, 1997). Therefore, we conclude that Saha Thai and Company A are affiliated under section 771(33)(F) by virtue of common control by the Ratanasirivilai family.

Because we find Saha Thai affiliated with Company A, Company B, and Company C under section 771(33)(F) of the Act, our preliminary determination that Saha Thai significantly impeded this review by failing to identify these customers as affiliated parties remains unchanged. As we stated in the preliminary results, sales to these customers represent a significant portion of Saha Thai's home market sales. However, because Saha Thai failed to provide the information that identified these potential affiliations until late in the proceeding, we were unable to fully explore the nature of the affiliation between Saha Thai and these customers.

Our initial analysis of Saha Thai's sales to Company A and Company B, resellers of the subject merchandise, indicates that these sales were not made at arm's length. (Saha Thai objected to the Department's standard arm's length test in this review. *See* Comment 4 below and the ''Department's Position.'') As total sales to the affiliated resellers exceeded 5% of Saha Thai's total home market sales during the POR, under our standard practice, we would have requested downstream sales data for these sales. The Department would then have been able to calculate normal value for these sales based on downstream prices pursuant to section 773(a)(5) of the Act. Therefore, we continue to find that Saha Thai was obligated to report these customers as affiliated resellers, and that its failure to do so prevented the Department from requesting and analyzing necessary downstream sales data. Given Saha Thai's failure to identify Company A, Company B and Company C as affiliates, we continue to find that Saha Thai failed to act to the best of its ability to comply with our requests for information on affiliates. (For a more detailed analysis of this issue, see the public version of the

Memorandum to the File, October 7, 1997.)

Comment 3

Saha Thai disputes petitioners' assertion that Saha Thai is affiliated with a home market customer and steel pipe producer, referred to in this public notice as Company E. Saha Thai also disputes petitioners' claim that the pipe manufactured by Company E is included in the scope of this review. Specifically, Saha Thai notes that the record does not show that Company E manufactures pipe with a surface coating, but rather pipe lined with PVC. Moreover, Saha Thai argues, the HTS subcategory 7306.30.5028, which includes pipe that is internally coated or lined with a non-electrically insulating material, is not included in the scope of the review. Saha Thai states that there is no evidence on the record that demonstrates that Company E produces unlined black or galvanized pipe as suggested by petitioners.

Saha Thai also argues that it is not affiliated with a home market customer that is a member of the Siam Steel Group (referred to in this public notice as Company D). Saha Thai argues that Company D also is not subject to common control with Saha Thai. Further, Saha Thai disputes petitioners' suggestion that it inconsistently applied the affiliated party provision of section 771(33) when responding to the Department's questionnaires. Saha Thai acknowledges, however, that the Department may classify certain members of the Siam Steel Group as affiliated because Saha Thai's managing director is chairman of each of these companies.

Petitioners argue that Saha Thai is affiliated with a certain end-user customer which also produces PVC-coated water pipes (Company E). Petitioners argue that PVC-coated steel water pipes are within the scope in this proceeding since the scope places no restriction on the surface finish of the merchandise. Moreover, petitioners note that it is likely that Company E would make uncoated water pipes as well as its production lines and would certainly be capable of producing uncoated water pipes as a requisite step in the production of coated water pipes. Petitioners argue that Saha Thai should have reported information about Company E's production and sales.

Petitioners also argue that home market customer Company D is affiliated with Saha Thai. Petitioners contend that Saha Thai admitted that the Chairman of Saha Thai is the Honorary Chairman of Company D.

Department's Position

Saha Thai, Company D, a home market customer, and Company E, a steel pipe producer, and other home market service providers are all members of the Siam Steel Group. The Department's regulations state that when analyzing affiliations under section 771(33) of the Act, the existence of corporate or family groupings is one indicia of control that will be closely scrutinized in each case. Final Regulations, 62 FR at 27380. The evidence on the record of this case demonstrates that, because of the Karuchit/Kunanantakul family's control of its member companies, the Siam Steel Group is a corporate or family grouping as envisioned by the SAA and the regulations, and therefore, the member companies are affiliated under section 771(33) of the Act.

Saha Thai acknowledged the potential for affiliation in its response to the Department's second supplemental questionnaire when it stated that ''[t]he Chairman of Saha Thai is in a position to exercise 'restraint or control' over Saha Thai due to his position as Chairman and the authority he exercises on a day-to-day basis over the company's affairs. For this reason, we have described other members of the Siam Steel Group as potentially affiliated * * *''. November 26, 1996 response at 2. Even more on point, in its rebuttal brief, Saha Thai conceded that at least four members of the Siam Steel Group are affiliated with Saha Thai because Mr. Somchai Karuchit, Saha Thai's Managing Director, is also the Chairman of these four companies. Saha Thai Rebuttal Brief at 4. As we stated in the preliminary results, Saha Thai's managing director is also chairman of Siam Steel International, a member of the Siam Steel Group, which during the POR became Saha Thai's largest shareholder. Saha Thai noted at verification that Siam Steel International also has investments in 11 of the other members of the Siam Steel Group. Saha Thai Cost Verification Report at 5. Moreover, the record evidence demonstrates that the Karuchit/ Kunanantakul family has significant common ownership interests in the members of the Siam Steel Group.

We find that this evidence of common management of and common ownership interests in these companies by Saha Thai's Managing Director and his family is strong evidence of affiliation by common control and the existence of a corporate or family grouping. However, despite the Department's request for such information, Saha Thai failed to provide sufficient data on the Siam Steel Group to permit a full analysis of control within the group. We disagree that Saha Thai has ''provided excruciating detail'' concerning the Siam Steel Group and its affiliation with Mr. Karuchit, Saha Thai's Managing Director (Rebuttal Brief at 35). For example, in its second supplemental questionnaire response, Saha Thai offered what can only be described as minimal disclosure on the nature of the common stockholding interests held by the family in the Siam Steel Group companies. While Saha Thai listed all family members with stock interests in group companies, Saha Thai failed to provide the percentage of interest held by each family member and the specific member company in which the family member's interests were held. September 23, 1996 response at 1. Further, Saha Thai provided only a ''summary of the ownership and control structure'' of each member of the group with no documentation to support its later claim that the companies in the group are operated independently. November 26, 1996 QR at 1. Saha Thai's submission is devoid of any explanation of the operation of the member companies; Saha Thai simply listed each company's investors and provided no explanation of the meaning it intended to convey when it identified companies being ''controlled'' by the family or certain investors.

The ''affiliated person'' provision of the statute is critical to the Department's antidumping analysis. Transactions between affiliated persons are highly scrutinized because they provide a means of potentially masking dumping and undermining the remedial purpose of the statute. With enactment of the URAA, Congress intended the Department to expand its longstanding scrutiny of relationships among corporate entities to ''permit a more sophisticated analysis which better reflects the realities of the marketplace,'' identifying corporate or family groupings as illustrative areas warranting heightened scrutiny. SAA at 838. Accordingly, based on the facts of this case, we find it reasonable to conclude that the Siam Steel Group companies, which include Saha Thai, Company D, and Company E are affiliated under section 771(33)(F) of the Act based on common control. As described above, Saha Thai identified members of the Siam Steel Group as potential affiliates but provided incomplete information concerning the ownership interests and management structure of these companies in response to supplemental questionnaires. Absent this information,

the Department was unable to examine the extent of common management and ownership among the Siam Steel Group. Saha Thai's failure to report complete information on the Siam Steel Group Companies is an additional factor supporting our determination to resort to total adverse facts available for this review. However, because evidence on the record does not establish that the products manufactured by Company E are within the scope of the antidumping duty order, our finding of affiliation between Saha Thai and this producer will not further affect the final results. (For a more detailed analysis of this issue, see the public version of the *Memorandum to the File*, October 7, 1997.)

Comment 4

Saha Thai argues that application of the Department's standard arm's length test is unreasonable and that use of an alternative test supports a finding of no affiliation between Saha Thai and certain of its home market customers. Saha Thai argues that reviewing courts have indicated that where evidence on the record of an individual case demonstrates that the test ''resulted in actual distortion of price comparability'' or otherwise produced unreasonable results, the standard test would not be sustained. Saha Thai further argues that the standard test continues to undergo refinements, and notes that the Department did not codify the standard test in its just-released final regulations, and cites the preamble to the Final Regulations, at 27355. Saha Thai claims that the Department's standard arm's length test, which uses average prices over the entire POR, introduces distortions into the price comparisons made and therefore produces inaccurate results. Saha Thai claims that its prices fluctuate with the cost of coil, the major production input, which changes frequently. Saha Thai claims that if a customer had no purchases of the product or if it purchased smaller quantities in months of lower prices, a comparison of this price with a weighted average based on the entire POR virtually guarantees that the alleged affiliate's price will fail the arm's length test. Saha Thai submits that because its prices are subject to frequent change the arm's length test used to analyze those prices must also compare prices at frequent intervals.

Saha Thai proposes limiting the window from which comparison sales are obtained to the allegedly affiliated parties' sale date. Under this proposed alternative, Saha Thai notes that no company which was reported as affiliated by Saha Thai, nor any company determined by the Department to be affiliated, fails the test. Saha Thai asserts that the Department should modify the standard arm's length test as proposed by Saha Thai for the final results of this administrative review. Saha Thai argues that application of this test yields two conclusions, either of which supports the use of Saha Thai's data as submitted: first, that Saha Thai is not affiliated with these resellers because it is not dealing with the resellers any differently from its dealings with other unaffiliated customers, and second, Saha Thai's prices to these resellers are at arm's length, thus permitting the use of these prices in the calculation of normal value even if the resellers are considered affiliated.

Petitioners counter that Saha Thai has provided no compelling reason for the Department to change its arm's length test at this belated stage of this administrative review. Therefore, argue petitioners, the Department should continue to apply its traditional court-approved 99.5% arm's length test for the final results of this administrative review. Petitioners first note that while the Department did not incorporate its arm's length test into its new regulations, just as they were not part of the old regulations, it did not repudiate this test. Petitioners note that in the preamble to Final Regulations at 27355, the Department states that it ''will continue to apply the current 99.5% test unless and until we develop a new method.'' Petitioners hold that if the Department was going to change the 99.5% rule in this proceeding it should have done so in the preliminary results and afforded all parties adequate opportunity for comment for the final results.

Second, petitioners dispute Saha Thai's allegation that the 99.5% test does not reflect its pricing practices and should be modified. Petitioners oppose Saha Thai's suggestion of limiting the arm's length test to sales within seven days. Petitioners claim that this methodology is far too restrictive to capture the effects of changes in coil cost, as most companies purchase coils on a quarterly or monthly basis and the price of the output pipe does not change on a daily basis because of changing coil cost.

Department's Position

Although the Department did not codify its standard arm's length test in the final regulations, the Department explicitly stated its intent to continue to apply the current test. Final Regulations, 62 FR at 27355. The Department's 99.5 percent arm's length test methodology is well established, and the CIT has repeatedly sustained the methodology. *See Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21 (CIT 1995), *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000 (CIT 1994), *NTN Bearing Corp. Of America* v. *United States*, 905 F. Supp. 1083 (CIT 1995), and *Torrington Co.* v. *United States*, Slip Op. 97–29 (March 7, 1997). As cited in *Micron*, the CIT will uphold the arm's length test, unless that test is shown to be unreasonable. 893 F. Supp at 45 (*citing Usinor*, 872 F. Supp at 1004). In this case, Saha Thai has not provided sufficient record evidence to warrant the Department's departure from its standard arm's length test. As coil costs change on a monthly or quarterly basis, prices do not change rapidly enough to compel the use of a restrictive seven-day window for comparison. Absent compelling evidence of price distortion, the Department finds no reason to depart from its standard methodology for purposes of this review. Thus, the Department finds it reasonable to apply the standard arm's length test in this instance and has done so for this review. Further, even if these sales had passed the arm's-length test, we would still be using total facts available for Saha Thai's margin because of its failure to identify affiliated producers. Thus, this issue is moot.

Comment 5

Saha Thai asserts in its case and rebuttal briefs that the Department should have terminated this review upon the timely withdrawal by Saha Thai and SAF of their request for a review. Saha Thai states that on May 14, 1996, in accordance with 19 CFR 353.22(a)(5), it timely submitted a letter to the Department withdrawing the request for the 1995–1996 administrative review. Saha Thai argues that since it was the only party to the proceeding to make a timely review request in accordance with the law and the Department's regulations, and since that request was timely and properly withdrawn, the Department should terminate this review immediately. Saha Thai notes that while the domestic interested parties claimed that they filed a review request on March 29, 1996, they conceded in their June 21, 1996, letter that the Department had no knowledge of their review request and that the request was neither entered in the Central Record Unit log nor placed in the proper file. Saha Thai holds that the only question, jurisdictional in nature, is whether the document was received by the Central Records Unit and that there is no reason for the

Department to depart from the unambiguous filing requirements for administrative review requests.

Petitioners argue that they made a timely request for an administrative review for the 1995–1996 period and that request was delivered to Saha Thai's counsel. They argue that this delivery constituted notice to Saha Thai, who had itself requested a review for this period, that petitioners had requested a review. Petitioners state that, several weeks after submitting its request, it was informed by the Department that its request was not entered into the log of the Department's Central Records Unit and was not placed in the proper file. Petitioners cite evidence showing that copies of their request were delivered in a timely manner to the Central Records Unit and to the Department official identified as the contact for requests for this review by messengers and that these copies of the request were received by the proper Department employees. Petitioners argue that the evidence it cites constitutes reliable evidence of actual delivery and receipt of a request for an administrative review that satisfies the requirements of both the Act and the Department's regulations.

Petitioners argue that the Department should not penalize the domestic interested parties because the Department inexplicably failed to perform the ministerial tasks of stamping, logging in and filing in their timely request for an administrative review. Further, petitioners cite *Kemira Fibres Oy* v. *United States*, Slip Op. 95–1077 at 10 (Federal Circuit, August 2, 1995) *citing Brock* v. *Pierce County*, 476 U.S. 253, 260 (1986) as support for the proposition that the Department may accept the petitioners' request as timely where a party fails to comply with regulatory or statutory timing requirements.

Petitioners state that the Act does not require a stamped copy for proof of filing. Moreover, argue petitioners, while the Department's regulations do require a stamp as proof of timely filing, the regulations do not preclude the Department from considering other proof of timely filing such as that presented by petitioners in their case brief. Petitioners argue that the Department could consider the evidence they presented as sufficient to initiate or continue a review and that doing so would be within the Department's discretion.

Petitioners' argument continues that the Department's regulations in force at the time permit termination of a review upon timely withdrawal but do not require such termination. Given the domestic industry's interest in continuing the review and the evidence of a timely request detailed above, petitioners argue that the Department acted correctly in exercising its discretion to continue the review. Petitioners conclude by arguing that while the respondents in this review would not be prejudiced by the Department continuing this review the domestic interested parties have a statutory right to an administrative review and that the denial of this right would have caused them severe prejudice.

Department's Position

On May 14, 1996, Saha Thai, SAF, Ferro Union and ASOMA withdrew their request for review and requested that the Department terminate the review with respect to sales by Saha Thai/SAF during the period of review. The petitioners objected to termination of the review on the grounds that, in accordance with 19 CFR 353.22, they had submitted a timely request for review of these companies to the Department on March 29, 1996. Petitioners also noted that respondents were served with a copy of their request for review.

The antidumping statute is silent with respect to the Department's authority to terminate administrative reviews. When the statute is silent, the Department has inherent authority to fill any ''gaps'' in the statute by promulgating regulations. Section 353.22(a)(5) of the Department's regulations provides the Secretary with discretion in accepting a timely request for withdrawal. As indicated above, the evidence on the record does not provide a definitive answer as to whether there is an official record of petitioners' request for review in the Central Records Unit due to faulty delivery by the petitioners or ministerial error by the Department. The evidence does demonstrate, however, that the respondents were served with a copy of petitioners' request, and, therefore, were put on notice of petitioners' intent that the Department conduct this review. Given these facts and the remedial nature of the antidumping law, the Department exercised its discretion to continue the review. *See Memorandum to Robert S. LaRussa from Stephen J. Powell*, July 11, 1996.

Comment 6

Thai Union argues in its case and rebuttal briefs that the Department's use of average estimated margins contained in the original petition as the basis for the adverse facts available is an unwarranted departure from prior practice, frustrates the remedial purpose of the antidumping duty statute, is punitive, and is not the most probative evidence of the current margin of dumping. Thai Union claims that by resorting to margins contained in the original petition, the Department has eliminated any distinction between its treatment of cooperative respondents participating fully in an investigation and verification and its treatment of uncooperative respondents that ignore or mislead the Department. Thai Union contends that it has been a fully cooperative respondent during the 1995–1996 administrative review as evidenced by its detailed and timely responses to the Department's original and supplemental questionnaires, as well as to Department inquiries made by telephone. Thai Union further asserts that it cooperated fully with the Department during the verification and that Thai Union's employees met with the Department officials and responded to all questions and requests for information to the best of their ability. Thai Union argues that it encountered several situations which led to its failure of verification, but that these situations are not related to its efforts to cooperate. Thai Union states that several key Thai Union employees left the company during this administrative review. In addition, Thai Union contends that new individuals replacing the departed personnel entered their positions without the benefit of proper training and instruction from their predecessors.

Thai Union states that adverse facts available is usually applied to respondents who disregard the Department's requests for information, who refuse to participate in an investigation and verification, or who attempt to mislead the Department with the information provided. Thai Union contends that it does not fall into this category of respondent. As such, Thai Union argues that resorting to the adverse inference in this case frustrates the purpose of the statute, which is to induce respondents to provide the Department with requested information in a timely, complete, and accurate manner so that the Department may determine current margins within statutory deadlines. Thai Union argues that because the record demonstrates that it did not refuse to cooperate with the Department assigning the higher rate for facts available is unreasonable. Thai Union avers that the Department's reasoning defeats the policy behind the two-tiered BIA structure because it completely overlooks substantial cooperation by the company and instead focuses on the results of the verification

to measure responsiveness. However, Thai Union contends that at verification, for a number of reasons, none of which touch on Thai Union's level of cooperation or participation, the data provided simply did not measure up. Thai Union states that the Department erred in its reference to Thai Union's ''substantial omissions and incomplete responses'' to the Department's requests for cost data as a justification for applying an adverse inference to the selection of facts available. Thai Union argues that it was wrong for the Department to gauge Thai Union's responsiveness on the results of verification. Thai Union states that it did not refuse to cooperate, but provided as much information as possible each time the Department made requests and communicated regularly with the Department during the investigation.

Thai Union claims the Department's determination—that the highest calculated margin in a prior review is not adverse—is unfounded. Thai Union argues that the Department offered no support for its opinion that application of the highest calculated margin of 29.89 percent *ad valorem* was not adverse to Thai Union, and that the average of the estimated margins in the petition, 37.55 percent *ad valorem*, was adverse.

Thai Union also contends that the Department acted punitively in its choice of facts available. Thai Union argues that in choosing the average of petition rates instead of the highest calculated margin to assign to Thai Union the Department in effect sought out the most punitive information rather than the best information. Thai Union argues that the Department has violated the ruling in *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990) where the court stated that the application of the BIA rule is punitive if the Department rejects ''low margin information in favor of high margin information that was demonstrably less probative of current conditions.'' Thai Union argues that the Department should have found that the highest calculated margin from the 1987–1988 administrative review was the most probative evidence of current margins but that it instead relied on refuted allegations from the original petition. Thai Union adds that there is no information on the record indicating that 29.89 percent is not indicative of current conditions and that there is no information on the record indicating that conditions reflected in the original investigation are more probative than the Department's findings in a more contemporaneous review. It argues that the Department should choose the most contemporaneous information in making its choice of facts available.

Finally, Thai Union argues that the Department erred in rejecting Thai Union's sales data. Thai Union states that the Department rejected Thai Union's sales data because the cost data could not be verified and to avoid manipulation of the margin calculation. Thai Union argues that this was inappropriate because Thai Union provided sales data in a timely manner, which the Department elected not to verify; therefore, there is nothing on the record which supports the conclusion that Thai Union's sales data is inaccurate. Thai Union concludes that the Department's rejection of Thai Union's sales data was arbitrary and that the Department improperly selected unverified estimates of margins, refuted in the original investigation, rather than using previously verified margins to determine the facts available in this administrative review.

Petitioners hold that the Department should apply adverse facts available to Thai Union for the final results as it did in the preliminary results of this review. Petitioners note that Thai Union had not provided complete questionnaire responses at the time verification commenced. In addition, during verification, Thai Union was unable to produce necessary records or to reconcile its submitted data with its records. Petitioners argue that virtually no aspect of Thai Union's cost of production and constructed value data was able to be verified by the Department. Moreover, the Department discovered at verification that Thai Union did not use its normal accounting books and records to prepare its responses even though these books contained product specific data, which Thai Union claimed to have used in its responses. Petitioners emphasize that Thai Union's incomplete general ledger made it impossible for the Department to reconcile the responses to the ledger. Petitioners assert that the cost build-ups provided by Thai Union at verification were inaccurate concerning reported labor costs, and Thai Union could not explain the calculations contained in those worksheets.

Petitioners argue that, because the cost of production and constructed value data was unverifiable, this data is unreliable and unusable for the final results. Therefore, petitioners assert, the Department is unable to determine whether Thai Union's home market sales were made at less than cost of production. However, since the constructed value data is unreliable and unusable as well, petitioners argue, there is no information on the record on which to base normal value, and the Department should decline to consider any of Thai Union's submitted information for the final results. Petitioners argue that Thai Union did not cooperate with the Department or act to the best of its ability to provide the information requested by the Department. Therefore, according to petitioners, the Department should apply an adverse inference to the facts available for the final results as it did in the preliminary results.

Department's Position

For these final results, we have determined that the facts of this case support assigning 37.55 percent, the average estimated margins from the petition, as total adverse facts available for Thai Union. Assigning this rate is fully consistent with section 776(a) and 776(b) of the Act. Section 776(a)(1) of the Act mandates the Department to use the facts available if necessary information is not available on the record and section 776(a)(2)(D) of the Act mandates the use of facts available when an interested party or any other person provides information that cannot be verified. As detailed in the preliminary results, Thai Union's responses to the Department's initial and three supplemental COP questionnaires were incomplete and unresponsive and contained numerous errors, omissions, and discrepancies. The information that Thai Union failed to provide the Department in the supplemental questionnaire responses is, in many instances, data that the Department first requested in the initial questionnaire. Moreover, at verification, Thai Union was unable to reconcile its reported cost data with its normal books and records kept in the ordinary course of business, was unable to provide requested worksheets to demonstrate the methodology used to calculate COP and CV, and was generally unprepared to go over items identified on the verification agenda. *See* Thai Union Cost Verification Report. Accordingly, the record in this case fully supports our determination to use facts available because necessary information is not on the record and Thai Union provided information that could not be verified.

In light of unverifiable COP and CV responses, the Department had no option other than resort to total facts available. We disagree with Thai Union's contention that we arbitrarily rejected Thai Union's sales data because our decision to resort to total facts available is based on our determination that Thai Union's entire response does not meet the requirements of section 782(e) of the Act. Because of the

extensive defects as detailed in the preliminary results, Thai Union's submitted COP and CV data could not be verified, which renders this information unreliable for purposes of calculating costs associated with Thai Union's actual production experience as required under the statute. Further, Thai Union's sales data does not meet the requirements of section 782(e) and was, therefore, not considered. The Department can only make price-to-price comparisons (normal value to export price) using those home market sales that pass the cost test under section 773(b) of the Act. The systematically flawed nature of Thai Union's COP data prevents the Department from testing Thai Union's home market sales to distinguish between below cost sales, which must be disregarded, and above cost sales, which are included in the margin calculation. Also, the Department is unable to calculate reliable difference in merchandise figures (DIFMERs) using Thai Union's unverified COP data. In this review, DIFMERs would have been required for a majority of the United States and home market sales matches. However, because DIFMER data is based on COP information from Thai Union's questionnaire responses, which, as discussed above, could not be verified, the Department is unable to measure the effect of physical differences in making sales comparisons. Finally, as we explained in the preliminary results, we determine that the use of facts available for Thai Union's COP data precludes the use of the submitted CV data because this data is tainted with unreliable cost elements. In sum, the unreliability of the submitted cost data renders Thai Union's sales unreliable and unusable. Thus, our rejection of Thai Union's sales data is based on a full examination of the record and analysis of the factors set forth in section 782(e). In similar factual circumstances, the Department has rejected an entire response due to the unreliability of a respondent's submitted cost data. *See e.g., Notice of the Final Determination of Sales at Less than Fair Value: Certain Pasta from Turkey,* 61 FR 30309, 30312 (June 14, 1996); *Notice of Final Results of Antidumping Duty Administrative Review: Cut to Length Carbon Steel Plate from Sweden,* 62 FR 18396, 18401 (April 15, 1997).

Our determination that the use of adverse inferences is warranted in this review is also supported by record evidence that demonstrates Thai Union's failure to act to the best of its ability to comply with our requests. In this review, we evaluated Thai Union's level of cooperation based on both the sufficiency of its questionnaire responses and the results of verification. Thai Union's failure to provide complete and accurate responses coupled with the evident lack of preparation for the verification demonstrates that Thai Union did not act to the best of its ability to cooperate in this review. Thai Union's responses contained numerous discrepancies that remained unexplained at verification. Moreover, Thai Union was unprepared to perform the primary test of verification, e.g., reconciling its reported cost data with its normal books and records. This lack of preparation undermined the entire verification. Thai Union's attempt to explain its lack of preparation by arguing that key personnel had departed the company does not excuse its failure to explain the calculation of substantial portions of the cost response, retain necessary worksheets, or provide a complete general ledger from which we could examine the rudimentary elements of its cost data. We also note that Thai Union had participated in a previous segment of this proceeding wherein we conducted a verification of its response. *See e.g., Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Administrative Review,* 56 FR 58355 (November 19, 1991). Therefore, the company was familiar with the requirements and procedures for verification.

We disagree with Thai Union's contention that because it has participated fully in this review we cannot find that it is uncooperative. The SAA explicitly states that the determination of whether a party is uncooperative rests on whether or not the party has ''acted to the best of its ability to comply with requests for necessary information.'' SAA at 870. A respondent's submission of information is one consideration in evaluating the level of cooperation. Neither the SAA nor our regulations prohibit us from finding a respondent has not cooperated to the best of its ability despite timely responses to our questionnaires. Rather, our determination is based on a full examination of the record of a particular segment to determine the quality of those responses (i.e., accuracy and completeness) and whether the respondent has hindered the calculation of accurate dumping margins. If this were not the case, then a respondent easily could manipulate the investigative process by providing complete yet inaccurate responses that cannot be verified. This scenario would cede control to the respondent to dictate the course of the review and force the Department to devote its limited administrative resources to scrutinizing frivolous questionnaire responses. In this regard, resorting to facts available under the current statute effectuates the same purpose as the BIA rule under the old law, that is, to encourage respondents to provide timely, complete, and *accurate* responses. *See e.g.,* Proposed Regulations, 61 FR 7307, 7327 (February 27, 1996) (noting that the factual circumstances triggering use of facts available are ''virtually identical'' to those triggering BIA); *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1571 (Fed. Cir. 1990).

Thai Union's contention that we have unlawfully eliminated the distinction between cooperative and uncooperative respondents adopted under our prior practice apparently presumes that under the two-tiered BIA structure a cooperative respondent was assigned a non-adverse rate. However, that is not the case. As we explained in the Proposed Regulations, under the BIA provision, we automatically applied an adverse inference regardless of the level of cooperation by the respondent. *See* Proposed Regulations, 61 FR at 7327. We assigned the most adverse rate to uncooperative respondents and a less adverse rate to cooperative respondents. Thus, under either tier, the BIA rate was adverse. The URAA has eliminated this automatic use of an adverse inference by limiting the use of adverse inferences to factual situations in which the Department has determined that the respondent has not acted to the best of its ability. *Id.* Use of adverse inferences is now determined on a case-by-case basis by examining the record evidence in a particular segment to evaluate the respondent's level of cooperation. *Id.* at 7328; Final Regulations, 62 FR at 27340. Accordingly, Thai Union's reference to the two-tiered BIA structure under our prior practice is misplaced. In this review, consistent with the SAA and current practice, we have determined that the record evidence demonstrates that Thai Union failed to act to the best of its ability and appropriately have applied adverse inferences consistent with section 776(b) of the Act.

With respect to our selection of an adverse facts available rate, we disagree with Thai Union's assertion that the rate most recently calculated for Thai Union is an appropriate adverse facts available rate for purposes of this review. The SAA directs us to consider ''the extent to which a party may benefit from its own lack of cooperation'' in employing adverse inferences. SAA at 870. The

highest calculated rate from this proceeding (29.89%) is the cash deposit rate currently assigned to Thai Union, which has been carried forward from the 1987–1988 administrative review. Based on the facts of this case, we find that assignment of Thai Union's existing cash deposit rate would be insufficient to effectuate the purpose of the facts available rule. We therefore selected a higher rate, the average of the estimated margins in the petition (37.55%).

Nor do we agree with Thai Union's contention that assignment of 37.55% is inappropriately punitive because it is ''demonstrably less probative of current conditions.'' Section 776(c) authorizes the use of secondary information, which includes information derived from the petition, as a source of facts available, and the SAA explicitly states that the Department may rely upon information contained in the petition when making adverse inferences under section 776(b) of the Act. SAA, at 870. Therefore, the statute and SAA clearly envision the use of petition margins as the source of adverse total facts available, and there is no requirement that the Department prove that a petition margin is ''more probative'' than any other rate calculated during the particular proceeding. In fact, the SAA emphasizes that the Department need not ''prove that the facts available are the best alternative information.'' SAA at 869.

The corroboration requirement contained in section 776(c) serves the purpose of assessing the probative value of the selected secondary information. To this end, when the Department relies on petition margins or calculated rates as total facts available, our practice is to evaluate the reliability and relevance of the information used as a measure of probative value. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan and Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 11825 (March 13, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 30309 (June 14, 1996).

In this case, as explained in the preliminary results, we determined that the petition margins are reliable because they were derived from price quotes, U.S. Customs data, import and export statistics, and other public information contemporaneous with the period of investigation. *See Antidumping Duty Petition,* February 28, 1985; *Memorandum for Alan F. Holmer from Gilbert B. Kaplan,* March 20, 1985. We also determined that the petition margins are relevant because there is no information on the record that demonstrates that 37.55% is not an appropriate total adverse facts available rate for Thai Union. *See e.g., Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review,* 62 FR 37543, 37555 (July 14, 1997).

Final Results of the Review

As a result of this review, we have determined that the following weighted-average dumping margins exist for the period March 1, 1995, through February 29, 1996:

Manufacturer/exporter	Period	Margin (percent)
Saha Thai/SAF/ Thai Tube/Thai Hong	3/1/95–2/29/96	29.89
Thai Union	3/1/95–2/29/96	37.55

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

Furthermore, the following deposit requirements shall 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 Tariff Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, 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) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 15.67 percent, the ''All Others'' rate made effective by the LTFV investigation. 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 the subsequent assessment of double antidumping duties.

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

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

Dated: October 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27471 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100697C]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting and Notice of Availability of Statement of Operating Practices and Procedures (SOPP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and of availability of SOPP.

SUMMARY: The Advisory Committee to the U.S. Section of ICCAT will hold its annual fall meeting on November 2–4, 1997. In addition, the Advisory Committee has finalized its SOPP and is announcing the availability of this document to the public.

DATES: The open sessions will be held on November 2, 1997, from 1 p.m. to 6 p.m. and November 3, 1997, from 8 a.m. to 12:45 p.m. Closed sessions will be held on November 3 from 1:45 p.m. to 6 p.m. and on November 4 from 8 a.m.