Dated: June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18443 Filed 7–9–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part

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

ACTION: Notice of final results of antidumping duty administrative review and revocation of antidumping duty administrative order in part.

SUMMARY: On March 6, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its antidumping duty administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan and intent to revoke in part with respect to respondent Aida Engineering, Ltd. (Aida) (63 FR 11211). This review covers two manufacturers/exporters of the subject merchandise to the United States and the period of February 1, 1996 through January 31, 1997. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Aida. We received rebuttal comments from Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC) (petitioners). We have not changed the results from those presented in the preliminary results of review. We have also determined to revoke the order in part, with respect to Aida.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3782, (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provision effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 353 (1997).

Background

On March 6, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the review of the antidumping duty order and intent to revoke order in part on MTPs from Japan (63 FR 11211). The Department has now completed this antidumping duty administrative review in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

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

The term mechanical transfer presses refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order (See ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 1, 1996).

This review covers two manufacturers of MTPs, and the period February 1, 1996 through January 31, 1997.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Aida and rebuttal comments from petitioners.

Comment 1: Aida contends that the Department erred in excluding below-cost sales in calculating the profit rate for constructed value. Aida states that its below-cost sales were not outside the ordinary course of trade according to the general definition of ''ordinary course of trade'' as it is defined in Section 771(15) of the Act; therefore, they should not have been excluded by the Department in its calculation of constructed value. Section 771(15) states:

> The term ''ordinary course of trade'' means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of the investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:
>
> (A) Sales disregarded under section 773(b)(1)
>
> (B) Transactions disregarded under section 773(f)(2)

Aida states that the Department and the courts have consistently held that below-cost sales are not *per se* outside the ''ordinary course of trade.'' *See, e.g., Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386, 402–403 (Ct. Int'l Trade, 1996); *Timken Co.* v. *United States,* 930 F. Supp. 621, 624–625 (Ct. Int'l Trade, 1996); and *Torrington Co.* v. *United States,* 984 F. Supp. 67, 75 (Ct, Int'l Trade, 1996). Although these cases were decided under the definition of ''ordinary course of trade'' as it existed prior to the Uruguay Round Agreements Act (URAA), Aida maintains that these cases continue to be valid because this definition was carried forward with URAA law. Aida asserts that the second sentence of section 771(15) only applies to below-cost sales that have been disregarded for purposes of normal value comparisons under section 773(b) of the Act.

Aida argues that there were no home market sales ''under consideration for the determination of normal value,'' and no sales were disregarded under section 773(b)(1). Aida contends that the Department based its decision to use constructed value on section 773(a)(1)(C) when it stated that ''the particular market situation in this case, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons in either the home market or third countries.'' 63 FR 11213. Aida concludes that, since no home market sales were considered or disregarded for price comparison under section 773(b)(1), the second sentence of section 771(15) was inapplicable, and that Aida's below-cost sales were not outside the ordinary course of trade.

Aida argues that the Department's discussion of the below-cost sales issue is based on an incorrect interpretation of

section 773(b)(1) in that the Department equated calculation of constructed value profit with ''determination of normal value.'' Aida states that, prior to the URAA amendments, the Department consistently took the position that section 773(b)(1) did not apply to the calculation of constructed value. *See Antifriction Bearings . . . and Parts Thereof From France, et al.,* 57 FR 28360, June 24, 1992. Aida asserts that the Department's position was upheld by the Court of Appeals for the Federal Circuit in *Torrington Co.* v. *United States,* 127 F.3d 1077, 1977, in which the Court stated:

> The requirement in 19 U.S.C. 1677b(b) [Section 773(b) of the Act] that Commerce ''shall'' disregard below-cost sales when calculating FMV based on actual sales figures does not apply when Commerce calculates FMV based on constructed value.

Aida asserts that, although the URAA revised section 773(b)(1), it did not change the basic structure of the provision, namely that disregarding sales ''in the determination of normal value'' means that the sales will not be used to determine price-based normal value, not that they will not be used to determine the profit rate for constructed value. *See* SAA at 163, House Rept. 103–316 at 833. Aida states that Congress amended the statute to provide for exclusion of certain below-cost sales from the constructed value profit calculation by adding the second sentence to the definition of ''ordinary course of trade'' in section 771(15). Aida asserts that in conjunction with the definitions of constructed value profit in section 773(e), the amendment determines when below-cost sales may be excluded from constructed value profit. *See* 62 FR 27359, *supra. See* also *Final Results of Antidumping Duty Review: Color Picture Tubes from Japan,* 62 FR 34201, 34209, June 25, 1997. Aida contends that if sales could be disregarded under section 773(b)(1) for constructed value purposes there would be no reason for the addition of clause (A) to section 771(15), and below-cost sales would be excluded without regard to the method of profit calculation. Aida argues that sales were not considered for price comparisons under section 773(a) and were not disregarded for such purposes pursuant to section 773(b)(1); thus, they are not outside the ordinary course of trade, and, therefore, do not meet the conditions for exclusion from the constructed value profit calculation under section 773(e)(2)(A).

In addition, Aida states that nothing on the record suggests that Aida's below-cost sales fell into any of the ''ordinary course of trade'' definitions mentioned in the Statement of Administrative Action (SAA), which accompanied the URAA amendments.

Petitioners contend that, in the 1995–1996 administrative review of this order, the Department rejected this same argument stating:

> We conclude, therefore, that in this review it is appropriate to exclude these sales from the profit calculation as outside the ordinary course of trade, pursuant to Section 771(15) of the Act. The fact that we did not ''disregard'' such sales in a price based determination of NV as provided in Section 771(15) of the Act does not prevent the Department from finding these sales outside the ordinary course of trade when we have, in effect, conducted a cost test on the sales and found that they have failed. We would have disregarded these sales, pursuant to Section 773(b)(1) of the Act if we were using price-to-price comparisons, and, as a result, we believe that it is appropriate to do so here. *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review,* 62 FR 11850–22, March 17, 1997.

Petitioners assert that the Department maintained that it was appropriate to exclude below-cost sales from CV profit, as sales made outside the ordinary course of trade in *Large Newspaper Printing Presses from Japan; Final Determination of Sales at less Than Fair Value,* 61 FR 38139–45, July 23, 1996; and *Certain Welded Carbon Steel Pipes from Thailand; Final Results of Antidumping Duty Administrative Review,* 61 FR 56515–18, November 1, 1996. Petitioners argue that although the Department does not treat below-cost sales as *per se* outside the ordinary course of trade in price-to-price cases, the Department has a *per se* rule with respect to below-cost sales made in a case where normal value is based on CV from the outset due to the unique nature of the product involved. Petitioners state that, in such situations, the Department performs a cost test on a sale-by-sale basis ''because each MTP is custom-built, differs significantly in specifications, and is essentially a discrete model.'' *Preliminary Results* at 11213.

Petitioners state that in the only ''new'' law case cited by Aida, the Department did not disregard below-cost sales because the Department based normal value on price-to-price comparisons, and the specific models found to be below-cost did not exceed the Department's ''20 percent'' test. *See Final Results of Antidumping Duty Review: Color Picture Tubes from Japan,* 62 FR 34209. Petitioners point out that Aida states in its case brief that the Department referenced *Mechanical Transfer Presses from Japan* in *Color Picture Tubes from Japan,* and indicates that, while a *per se* rule may not attain in price-to-price cases, below-cost sales are properly excluded from CV profit when normal value is based on CV. Accordingly, petitioners argue that the Department should continue to disregard below-cost sales in its CV profit calculation for the final results, consistent with its determination in the preliminary results and the other cited cases.

Department's Position: Aida's argument that no sales were disregarded under section 773(b)(1), and therefore none can be considered outside the ordinary course of trade reflects an overly-restrictive interpretation of the Act, and raises form over substance. Because the Department found below-cost sales in the previous review, the Department had ''reasonable grounds to believe or suspect'' that home market sales were made at prices which were below the cost of production under section 773(b)(2)(A)(ii), and therefore was required to initiate a cost investigation under section 773(b)(1). Moreover, as the Department explained in the prior review, there are reasonable grounds to believe that below-cost sales were made where actual costs demonstrate as much, as they do in the present case. *MTPs from Japan,* 62 FR at 11822.

Furthermore, the facts of this case closely resemble those of *LNPPs,* in which the Department explained, ''the unique cost reporting aspects of this case were such that, in effect, [we] conducted a cost investigation. . .'' 61 FR at 38145.

The Department also explained in *LNPPs* that, the Department has sufficient flexibility under section 771(15) to conclude, in the present circumstances, that sales below the cost of production should be disregarded as outside the ordinary course of trade. *Id.* This position has been upheld by the CIT in *Mitsubishi Heavy Industries* v. *U.S.,* Slip Op. 98–82. at 41–42 (CIT June 23, 1998). Section 771(15) makes clear on its face that the circumstances listed are only two ''among others'' in which sales should be considered to have been made outside the ordinary course of trade. See also URAA Statement of Administrative Action (SAA), H.R. Doc. 103–316, 103d Cong., 2d Sess, Vol. 1 at 834. Thus, even taking AIDA's view that the Department is not acting under section 773(b), the Department has the authority to find, in the present circumstances, that sales which it finds to be below cost, and which it would disregard under section 773(b), are outside the ordinary course of trade.

Finally, Aida's overly-rigid reading of the statute must be rejected because it

would mean that in cases such as the present one and *LNPPs,* where the complexity of the product makes resort to CV almost inevitable, the Department would be unreasonably precluded from computing actual profit under section 773(e)(2)(A), the preferred method of determining CV profit, since sales outside the ordinary course of trade may not be used in the calculation of profit under that method. Moreover, the SAA, at 840, indicates that under this provision ''in most cases Commerce would use profitable sales as the basis for calculating profit.'' Thus, Aida's interpretation of the statute undermines Congress' preference for the calculation of actual profit for purposes of CV.

Comment 2: Aida contends that the Department should use the Japanese short-term interest rate to calculate credit expenses for Aida's U.S. sales #1–4 which were made in yen. Aida originally reported the credit expenses for U.S. sales #1–4 based on the Japanese yen short-term prime interest rate, but later revised their calculations in accordance with the Department's supplemental questionnaire. Aida cites both *Sodium Azide from Japan,* 61 FR 42585, 42588, August 16, 1996, and *Engineered Process Gas Turbo-Compressor Systems * * * from Japan,* 62 FR 24394, 24408, May 5, 1997, which state:

> [W]hen sales are made in, and future payments are expected in a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated.

Thus, Aida argues that since U.S. sales #1–4 were made in yen and payment was received in yen, the yen short-term interest rate should be used to calculate credit expense for these sales.

Department's Position: The Department agrees with respondents, in that, credit for U.S. sales # 1–4 should be denominated in Japanese yen. The Department has used a short-term interest rate tied to the currency in which the sales are denominated. We based this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. Thus, we have calculated credit for U.S. sales #1–4 based on Japanese yen since these sales were denominated in yen.

Comment 3: Aida argues that the Department should reduce expenses in U.S. sale #2 on a *pro-rata* basis to adjust for the removal of the destack feeder from the sales price. In its preliminary determination, the Department removed the destack feeder from sale #2 by subtracting from the reported gross unit price the line item price set forth for the destack feeder in a price quotation that had preceded the contract. Aida argues that having done so, the Department should have subtracted the amount of expense attributable to the destack feeder from the movement expenses, warranty expense, credit expense, and service fee to reflect the removal of the destack feeder from the sale.

Department's Position: The Department agrees with Aida in that expenses in U.S. sale #2 should be reduced on a *pro rata* basis corresponding to the subtraction of the destack feeder from the sales price. The Department has revised the U.S. sales summary to reflect these changes.

Comment 4: Aida asserts that the Department should deduct transportation expense from the sales price in calculating profit on home market sales. Aida states that its cost accounting includes transportation cost in its manufacturing cost. Aida Section D Response, pp. D–34, D–35. Since the Department treats transportation cost as a movement expense, Aida deducted transportation cost from manufacturing cost in calculating cost of manufacture cost (MANCOST), and it subtracted transportation cost as a separate line item in calculating the home market profit rate. Aida Supplemental Response Exhibit S–10. Since it is a cost incurred by Aida on the sales, Aida maintains that transportation cost must be subtracted from revenue in calculating profit. Aida contends that when the Department recalculated Aida's home market profit rate, it failed to deduct transportation expense, thus, overstating home market profit.

Department's Position: The Department agrees with Aida. Transportation expense should be deducted from the sales price when calculating the home market profit rate. To ensure that home market profit is calculated correctly it is necessary to deduct the transportation expense from both the sales price and the COM.

Final Results of the Review

We determine that the following dumping margins exist:

Manufacturer/exporter	Time Period	Margin (percent)
Aida Engineering, Ltd	2/1/96–1/31/97	0.00
Hitachi-Zosen	2/1/96–1/31/97	0.00

We further determine that Aida sold MTPs at not less than NV for three consecutive review periods, including this review period, and it is not likely that Aida will in the future sell subject merchandise at less than NV. Additionally, Aida has submitted the required certifications, and has agreed to its immediate reinstatement in the antidumping duty order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than NV. Furthermore, we received no comments from any interested party contesting the revocation. For these reasons we are revoking the order on MTPs from Japan with respect to Aida in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2). In accordance with the regulations, the Department will take seriously any credible evidence that, subsequent to the revocation, Aida sold the merchandise at less than NV.

This revocation applies to all entries of the subject merchandise from Aida entered, or withdrawn from warehouse, for consumption on or after February 1, 1997. The Department will order suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made on or after February 1, 1997.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Hitachi Zosen will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of

the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will be the rate established in the investigation of sales at less than fair value, which is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 353.22(f).

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18307 Filed 7–9–98; 8:45 am]

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DEPARTMENT OF COMMERCE

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; 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: On March 6, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on polyethylene terephthalate film sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997.

As a result of comments we received, the dumping margin has changed from that presented in our preliminary results.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or Linda Ludwig, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475, or 3833, respectively.

SUPPLEMENTAL INFORMATION:

Background

On March 6, 1998, (63 FR 11214), the Department published the preliminary results of administrative review and recission in part of the antidumping duty order on PET film from the Republic of Korea, 56 FR 25669, (June 5, 1991).

This review covers one manufacturers/exporter of the subject merchandise to the United States: SKC Co., Ltd, (SKC), and the period June 1, 1996 through May 31, 1997.

The Department has concluded this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1996 through May 31, 1997.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 353 (1997).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. On April 6, 1998, we received timely comments from the respondent, SKC and the petitioners (E.I. DuPont de Nemours & Company, Hoechst Celanese Corporation, and ICI America's Inc.) (Petitioners). SKC and the Petitioners submitted their reply briefs on April 13, 1998 and April 14, 1998 respectively.

Comment 1: SKC contends that the payment dates for some of the U.S. sales reported in its December 8, 1997 letter were incorrectly transcribed, thereby overstating its U.S. credit expense. SKC contends that the Department should accept the corrected payment dates set forth in its March 16, 1998 letter. SKC further contends that the correct payment dates are discernible from the record, and that the error in question is clearly clerical in nature.

SKC argues that the Department's established practice is to accept corrections following the preliminary results when (1) the error in question is demonstrated to be a clerical error; (2) the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documention, is submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error does not entail a substantial revision of the response; and (6) the respondent's corrective documentation does not contradict information previously determined to be accurate at verification. (*See e.g., Certain Fresh Cut Flowers from Colombia, Final Results of Antidumping Duty Administrative Reviews, (Colombian Flowers)* 61 FR 42833, 42834 (August 19, 1996).)

SKC asserts that the corrected information meets the criteria outlined in *Colombian Flowers* because the error contained in its December 8, 1997 response is demonstrably clerical, can reliably be discerned from the data on