

of July 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 26, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.
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[A-580-601]

Certain Stainless Steel Cooking Ware From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews.

SUMMARY: In response to requests from Farberware, Inc. (the petitioner), the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. This notice of the preliminary results covers three consecutive review periods for January 1, 1991 through December 31, 1991, January 1, 1992 through December 31, 1992, and January 1, 1993 through December 31, 1993. The 1991 and 1992 reviews cover two manufacturers/exporters, Namil Metal Company (Namil) and Daelim Trading Company, Ltd. (Daelim). The 1993 review covers one manufacturer/exporter, Daelim. The reviews indicate the existence of dumping margins during these periods.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our

final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT:

Amy S. Wei or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on certain stainless steel cooking ware from the Republic of Korea on January 20, 1987 (52 FR 2139). The Department published notices of "Opportunity To Request an Administrative Review" of the antidumping duty order for the 1991 review period (56 FR 66846, December 26, 1991), for the 1992 review period (58 FR 4148, January 13, 1993), and for the 1993 review period (59 FR 564, January 5, 1994). On January 31, 1991, the petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea for two manufacturers/exporters, covering the period January 1, 1991 through December 31, 1991. We initiated the 1991 review on February 24, 1992 (57 FR 6314). On January 27, 1993, the petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea for two manufacturers/exporters, covering the period January 1, 1992 through December 31, 1992. We initiated the 1992 review on March 8, 1993 (58 FR 12931). On January 31, 1994, the petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea for one manufacturer/exporter, covering the period January 1, 1993 through December 31, 1993. We initiated the 1993 review on February 17, 1994 (59 FR 7979).

The Department is now conducting reviews for these periods in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by these administrative reviews are certain stainless steel cooking ware from the Republic of Korea. During the review periods, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.00. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope is stainless steel kitchen ware. The HTS item number is provided for convenience and Customs' purposes. The written description remains dispositive as to the scope of the product coverage.

The review periods (POR) are January 1, 1991 through December 31, 1991, January 1, 1992 through December 31, 1992, and January 1, 1993 through December 31, 1993, respectively. The 1991 and 1992 reviews cover two companies, Namil and Daelim. The 1993 review covers one company, Daelim.

Use of Best Information Available

Namil

For the 1991 review, in filing its questionnaire response, Namil failed to submit computer tapes of all sales data in a timely manner. Because this data was provided after the due date, the Department rejected this additional submission in accordance with 19 CFR 353.31(b)(2). Therefore, in the case of Namil, we have calculated a dumping margin using the best information available (BIA), in accordance with section 776(c) of the Act and 19 CFR 353.37(b).

In determining what to use as BIA, the Department follows a two-tiered methodology. The Department assigns lower margins to those respondents who cooperate in a review (tier two), and margins based on more adverse assumptions for those respondents who do not cooperate in the review, or who significantly impede the proceeding (tier one) (see *Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed.Cir., June 22, 1993), *aff'd*, 28 F.3d 1188, *cert. denied*, 1995 U.S. Lexis 100 (1995) (*Allied-Signal*)).

When a company substantially cooperates with our requests for information, but fails to provide the information requested in a timely manner or in the form requested, we assign the company second-tier BIA, which is the higher of (1) the firm's

highest rate (including the "all others" rate) for the same class or kind of merchandise from the same country from a prior administrative review or, if the firm has never before been investigated or reviewed, the "all others" rate from the less-than-fair-value (LTFV) investigation; or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin (see *Allied-Signal*, 28 F.3d at 1189, 1190 n.2).

Because Namil submitted the narrative portion of the questionnaire response in a timely manner, we are using cooperative BIA as the basis for Namil's margin for the 1991 review. For Namil, we have used, as BIA, 11.22 percent, which is the highest rate calculated in this review.

For the 1992 review, Namil failed to respond to the Department's questionnaire. When a company refuses to cooperate with the Department, or otherwise significantly impedes the Department's proceedings, it assigns that company first-tier BIA, which is the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review; or (2) the highest calculated rate found in the present administrative review for any firm for the same class or kind of merchandise from the same country of origin (*Id.*).

We, therefore, are using uncooperative BIA as the basis for Namil's margin in the 1992 review. For Namil, we have used, as BIA, 31.23 percent, which is the highest rate calculated for any firm in the first review (see *Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 58 FR 9560, February 22, 1993).

Daelim

Daelim responded to the Department's questionnaires. However, at verification for the 1991 review, we discovered some U.S. sales, with either sale dates or U.S. entry dates during the POR, which Daelim had failed to report in its original and supplemental questionnaire responses. The submission of U.S. sales is a critical element in our calculation of the dumping margin. Failure to provide all of the U.S. sales is a serious omission, which can cause our dumping margin to be distorted. This failure of Daelim to fully respond to the Department's questionnaire in a timely manner has led the Department to apply partial BIA to its U.S. sales in accordance with section 776(c). In

applying partial BIA to Daelim's U.S. sales, we used to these unreported U.S. sales the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review. We have applied as BIA for these unreported sales a rate of 31.23 percent, which was the highest rate calculated for any firm in the first review (*Id.*).

United States Price

In calculating USP for Daelim for each review, the Department used purchase price, as defined in section 772 of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation and exporter's sales price was not otherwise indicated. Purchase price was based on the packed, FOB price to unrelated purchasers in the United States. For each review, we made deductions from the unit price, where applicable, for terminal handling charges, brokerage charges, inland freight, wharfage, container freight station (CFS) charges, export license recommendation fees, outer (shipment) packaging, and miscellaneous, bank-related expenses. We made an addition to Daelim's USP for duty drawback in accordance with section 772(d)(2) of the Act.

In the 1991 review, Daelim claimed that it incurred warranty expenses to one U.S. customer on sales which occurred prior to the POR. At verification, we discovered that Daelim's warranty expenses were actually a recision of a price increase to the U.S. customer. Daelim's invoices reported the lower price that the U.S. customer had actually paid for the merchandise. However, in its response to the Department's questionnaire, Daelim reported the price to the customer including the price increase. Consequently, we used the actual lower price charged by Daelim to that customer, rather than the prices for U.S. sales reported by Daelim on its computer tape. Because some selling expenses were based on sales value, we made additional adjustments to Daelim's reported U.S. brokerage expense and export license recommendation fee for sales to the one U.S. customer. We did not make a warranty expense adjustment to the USP of the other U.S. customers. Daelim did not incur any warranty expenses during the 1992 and 1993 PORs.

For those U.S. sales which Daelim failed to report prior to verification for the 1991 review with either sale dates or entry dates during the POR, we applied a BIA rate of 31.23 percent.

No other adjustments to USP were claimed or allowed.

Foreign Market Value

For the purposes of the preliminary reviews, we determined that, due to the nature of the merchandise under review, none of the cooking ware sold in the United States could reasonably be compared to cooking ware sold in the home market. This is due to the fact that the majority of the cooking ware sold in the United States consisted of semi-finished products for further manufacturing in the United States, whereas the cooking ware sold in the home market consisted of finished products. Under the Department's standard practice, we only compare U.S. products with products that have a difference in variable cost of manufacture (difmer) of less than 20 percent. Because products sold in the home market did not pass the Department's difmer test, we did not use the home market sales as a basis for FMV. In accordance with section 773(a)(2) of the Act, we calculated FMV based on constructed value of the models sold in the United States for the 1991, 1992, and 1993 reviews (see *Large Power Transformers from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 45767, DOC Position to Comment 1, October 5, 1992, and *High Information Content Flat Panel Displays and Display Glass Therefore from Japan; Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32388, DOC Position to Hosiden Comment 1, July 16, 1991).

In accordance with section 773(e) of the Act, the constructed value of the models sold in the United States included materials, fabrication, general expenses, profit, and packing. As a result of our verification findings for the 1991 review, we recalculated Daelim's 1991 reported costs for direct labor, variable overhead, interest expense, profit, direct selling expenses, indirect selling expenses, imputed credit, and general and administrative expenses for the purpose of deriving constructed value. We multiplied each by a factor based on our findings during the verification of Daelim's reported cost data.

As a result, we recalculated total cost of manufacturing, total cost of production, and total constructed value based on the changes to Daelim's reported costs for the 1991 review. Revised total cost of manufacturing equalled the sum of revised direct labor, revised variable overhead, fixed overhead, and direct material costs.

Revised total cost of production equalled the sum of revised total cost of manufacturing, revised direct selling expense, revised indirect selling expense, revised imputed credit expense, revised general and administrative expense, and revised interest expense. Revised total constructed value equalled the sum of revised total cost of production and revised profit.

As a result of our verification findings for the 1992 and 1993 reviews, we recalculated Daelim's reported costs for the respective period for general and administrative expenses, interest, and profit for the purpose of deriving

constructed value, in accordance with section 773(e) of the Act. As a result, we recalculated total cost of production and total constructed value based on the changes to Daelim's reported costs for the 1992 and 1993 reviews. Revised total cost of production equalled the sum of total cost of manufacturing and total general expenses, which included revised general and administrative expenses, revised interest expenses, and selling expenses. Revised total constructed value equalled the sum of revised total cost of production and revised profit. In the 1993 review, in accordance with 19 CFR 353.56 (b)(1), we offset commissions paid in the U.S.

market with indirect selling expenses from the home market since no commissions were paid in the home market.

In accordance with section 773(e)(1)(B) of the Act, we used the statutory minima of 8 percent for profit and 10 percent for general expenses for each review since reported profits and general expenses were less than the statutory minima for each review.

Preliminary Results

As a result of our reviews, we preliminarily determine the dumping margins to be:

Manufacturer/Exporter	Time Period	Margin (percent)
Namil Metal Company, Ltd	1/1/91-12/31/91	11.22
Daelim Trading Company, Ltd	1/1/91-12/31/91	11.22
Namil Metal Company, Ltd	1/1/92-12/31/92	31.23
Daelim Trading Company, Ltd	1/1/92-12/31/92	3.43
Daelim Trading Company, Ltd	1/1/93-12/31/93	0.14

Parties to this proceeding may request disclosure within 5 days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish a notice of the final results of these administrative reviews, which will include the results of its analysis of issues raised in any such briefs or comments.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisal instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of certain stainless steel cooking ware from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for Namil will be that margin established in the final results of

these reviews; (2) if Daelim's latest period of review rate remains *de minimis* for the final results, Customs will require a cash deposit of zero percent; (3) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (4) if the exporter is not a firm covered in these reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (5) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 8.10 percent, the "all others" rate established in the LTFV investigation (52 FR 2139, January 20, 1987).

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or a bond for that amount. Accordingly, before completion

of the final results of these administrative reviews, the level of export subsidies as determined in *Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Affirmative Countervailing Duty Determination*, 51 FR 42867 (November 26, 1986), which is 0.71 percent *ad valorem*, will be subtracted from the dumping margin for cash deposit purposes. There have been no reviews conducted since the publication of the countervailing duty order.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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.

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

Dated: June 26, 1995.

Susan G. Esserman,
Assistant Secretary for Import Administration.

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