

available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, liquified petroleum gas, ethane, methane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, and sulfuric acid.

The request cites the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 23, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 17, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95-18135 Filed 7-21-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Finding Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Finding Administrative Review.

SUMMARY: In response to a request by a U.S. producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 15 manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1991 through November 30, 1992.

As a result of the review, we have preliminarily determined that dumping margins exist for certain of these respondents. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties at the prescribed rates.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, 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) 482-0410.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, the Department of the Treasury published in the **Federal Register** (38 FR 34655) an antidumping finding with respect to elemental sulphur from Canada. On December 4, 1992, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping finding for the period December 1, 1991 through November 30, 1992 (57 FR 57419). We received a timely request from Pennzoil Sulphur Company (Pennzoil), a domestic producer of elemental sulphur, for review of the finding with respect to Alberta Energy Co., Ltd. (Alberta), Allied Corporation (Allied), Brimstone Export (Brimstone), Burza Resources (Burza), Canamex, Delta Marketing (Delta), Drummond Oil & Gas, Ltd. (Drummond), Fanchem, Husky Oil, Ltd. (Husky), Mobil Oil Canada, Ltd. (Mobil), Norcen Energy Resources (Norcen), Petrosul International (Petrosul), Real International (Real), Saratoga Processing Co., Ltd. (Saratoga), and Sulbow Minerals (Sulbow). Pennzoil is a producer of elemental sulphur, and, thus, an "interested party" as defined by 771(9)(C) of the Tariff Act of 1930, as amended (the Act) and § 353.2(k)(3) of the Department's regulations. This review was initiated on February 23, 1993 (58 FR 11026) with respect to all 15 of the companies listed above. On March 25, 1993, the Department issued antidumping sales questionnaires to respondents. On June 23, 1993, Pennzoil filed allegations of sales below the cost of production (COP) against Mobil, Husky, and Petrosul. On December 3, 1993, the Department initiated cost investigations of these three respondents and issued COP questionnaires on December 6, 1993. The Department is conducting this

review in accordance with section 751 of the Act.

Scope of the Review

The period of review (POR) is December 1, 1991 through November 30, 1992. Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00.

The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description of the scope of this order remains dispositive as to product coverage.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

United States Price (USP)

The Department has calculated a dumping margin only for Husky. (see explanations below for analyses of remaining firms.)

In calculating USP for Husky, the Department used purchase price as defined in section 772(b) of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Husky sold primarily liquid sulphur to the United States during the POR but also had sales of bagged and powdered elemental sulphur.

We calculated purchase price based on an ex-factory f.o.b. Canadian plant, or customer's specific delivery point bases. We made adjustments, where applicable, for discounts and movement expenses in accordance with section 772(d)(2) of the Act.

Foreign Market Value (FMV)

Husky did not have a viable home market during the POR. Therefore, Husky reported third-country sales of formed (e.g., prilled) elemental sulphur. Section 773(a)(4)(C) of the Act provides that a difference-in-merchandise (DIFMER) allowance may be made when a product on which FMV is based is not identical to that exported to the United States. Section 353.57 of the Department's regulations provides that the allowance will normally be based on differences in cost of production, but may be based on differences in market value. The Department makes DIFMER adjustments on the basis of precise physical differences. In addition, the cost differences which form the adjustment must be related to those physical differences and not to

extraneous factors. Further, when the DIFMER is greater than twenty percent of the U.S. product's total cost of manufacture (COM), the Department resorts to constructed value (CV) to establish FMV. *See Differences in Merchandise; 20% Rule*, Import Administration Policy Bulletin: Number 92.2, July 29, 1992 ("Policy Bulletin No. 92.2"). For purposes of these preliminary results, we determined that variable manufacturing cost differences of formed elemental sulphur exceeded twenty percent of the total average cost of manufacture, on a model-specific basis, of the product exported to the United States (liquid, powdered and bagged). Therefore, in accordance with Department policy and section 773(a)(2) of the Act, we calculated FMV based on the CV of the merchandise sold in the United States.

In accordance with section 773(e) of the Act, CV includes the costs of materials and fabrication, general expenses, profit, and, where relevant, packing for shipment to the United States. We adjusted Husky's reported COM by disallowing the offset of processing income against operating costs and increasing depreciation by basing it on a cost basis allocation methodology as opposed to a net-realizable value allocation methodology (*See COP and CV Calculation Adjustment Memo for the Preliminary Determination of Elemental Sulphur From Canada—Husky Oil Ltd.*, July 7, 1995). We used Husky's third-country selling expenses pursuant to section 773(e)(1)(B) of the Act. We used Husky's actual general expenses as they were greater than the statutory minimum of ten percent of COM but applied the statutory eight percent for profit to COP.

We made circumstance-of-sale adjustments for differences in credit and royalty expenses.

No other adjustments were claimed or allowed.

Non-Shippers

Based on the information on the record, the Department has determined that Allied, Alberta, and Norcen had no shipments to the United States during the POR. Because these firms have never been subject to a review and, therefore, do not have their own rates in place, entries of their merchandise will continue to enter under the "All Others" category.

Best Information Available

As a result of our review, we have preliminarily determined to apply best information available (BIA) to various firms. (See company specific descriptions below.)

Section 776(c) of the Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

Department regulations provide that "[t]he Secretary will use the best information available whenever the Secretary (1) [d]oes not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) [i]s unable to verify, within the time specified, the accuracy and completeness of the factual information submitted." 19 CFR 353.37(a).

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. 19 CFR 353.37(b). Prior Department practice has been to determine, on a case-by-case basis, what constitutes BIA. This can be a decision to apply total BIA to a respondent or partial BIA (the selective use of individual pieces of data to substitute for missing or unreliable data in a dumping analysis).

In *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1191-92 (Fed. Cir. 1993), the Court of Appeals for the Federal Circuit held that it is within the Department's discretion to decide what constitutes BIA in a particular case and that this decision must be afforded considerable deference. In exercising this discretion, the Department has established two tiers of BIA in situations where it is unable to use a company's response for purposes of determining that company's dumping margin and applies each tier based on whether the respondent cooperated or failed to cooperate in the proceeding.

- For first-tier BIA, applied when a company refuses to cooperate with the Department or significantly impedes the proceeding, the Department has used as BIA 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 less than fair value (LTFV) investigation or prior administrative reviews, or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

- For second-tier BIA, applied when a company substantially cooperates with the Department's requests for information but fails to provide the information requested in a timely manner or in the form required, or the Department is unable to verify the

accuracy and completeness of the information submitted, the Department has used as BIA the higher of (1) the highest rate (including the "All Others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

The Department's two-tiered BIA methodology also was upheld by the court in *Allied-Signal*. *Id.*

Mobil

Mobil did not have a viable home market during the POR. Therefore, Mobil reported third-country sales of formed (e.g., prilled) elemental sulphur. During this administrative review, Mobil cooperated with the Department's requests for information, including participating in verification of its responses. However, during verification at Mobil, the Department discovered significant discrepancies in Mobil's submissions to the Department and company records, which are outlined in detail in the sales verification report. *See Verification of Sales Questionnaire Response of Mobil Oil Canada Ltd.*, November 22, 1994 (*Verification Report*) (see also Memorandum to Joseph A. Spetrini, from Holly A. Kuga, re: Use of Best Information Available for Mobil Oil Canada, Ltd., in 1991-92 Administrative Review of Antidumping Finding on Elemental Sulphur from Canada (May 10, 1995)). Therefore, because we were unable to verify Mobil's response as required by 776(b) of the Act, the Department determined that the use of total BIA is appropriate. However, because Mobil substantially cooperated in this segment of the proceeding by responding to the Department's requests for information and participating in verification, the Department determined that the second tier of BIA as described above should be applied to Mobil for the preliminary results of review. The highest rate previously applicable to Mobil is 5.56 percent. Therefore, the rate calculated for Husky, the highest calculated rate in this review, shall apply to Mobil as this rate is higher than the rate previously applicable to Mobil.

Petrosul

Petrosul, a reseller of elemental sulphur, had a viable home market during the POR and had home-market and U.S. sales of liquid sulphur.

Pennzoil alleged that Petrosul made home market sales at prices below the cost of producing the elemental sulphur. Based on this allegation, the Department found reasonable grounds to believe or

suspect that Petrosul's sales were below cost and initiated a cost investigation pursuant to 772(b) of the Act. The statute is concerned specifically with the cost of production of the merchandise, and Petrosul does not itself produce the elemental sulphur it sells. Department practice in such situations is to compare the production costs of the producer (Petrosul's supplier/producers), plus the producer's SG&A, plus the SG&A of the seller (Petrosul), to the seller's home market sales to determine whether home market sales were made below the COP. See *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway* 56 FR 7661 (February 25, 1991); *Final Results of Antidumping Duty Administrative Reviews: Oil Country Tubular Goods from Canada* 56 FR 38408 (August 13, 1991). Therefore, on May 3, 1994, the Department requested cost of production information from the producers of the merchandise sold by Petrosul. However, these producers refused to supply that information. Because Petrosul's suppliers did not provide their production costs, the only cost data on the record is Petrosul's SG&A. Because the Department could not identify any other source of data that would provide a reasonable surrogate for the missing supplier-producers' cost of producing elemental sulphur, the only alternative open to the Department is to apply total BIA to Petrosul. See Memorandum to Joseph A. Spetrini, from Holly A. Kuga, re: 1991-92 Antidumping Administrative Review of the Antidumping Finding on Elemental Sulphur from Canada: Use of Best Information Available for Petrosul International Due to Lack of Any Useable Cost of Production Information (July 11, 1995).

However, during this administrative review, Petrosul responded to the Department's requests for information, including the initial and supplementary sales questionnaires, as well as the request for limited COP data. Given Petrosul's attempts to fully cooperate in this review, the Department determined that second tier of BIA as described above be applied to Petrosul for the preliminary results of review. The rate previously applicable to Petrosul is zero percent. Therefore, the rate calculated for Husky, the highest calculated rate in this review, shall apply to Petrosul as this is higher than the rate previously applicable to Petrosul.

Non-Responders/Untimely Responders

Based on a failure to respond or an untimely response to the Department's questionnaire, we have determined that

Brimstone, Burza, Sulbow, Canamex, Delta, Drummond, Real, Fanchem, and Saratoga failed to cooperate in this proceeding and, therefore, we have been assigned them margins based on BIA. Furthermore, consistent with the Department's two-tiered BIA methodology, the Department has determined that first-tier BIA, as described above, applies to each of these companies. The highest rate applicable to a firm is 28.9 percent. Therefore, this rate shall apply to each of these respondents.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1991, through November 30, 1992:

Manufacturer/exporter	Percent margin
Husky Oil Ltd.	5.66
Mobil Oil Canada, Ltd.	(1) 5.66
Petrosul	(1) 5.66
Alberta	(2)
Allied	(2)
Norcen	(2)
Brimstone	(3) 28.9
Burza	(3) 28.9
Canamex	(3) 28.9
Delta	(3) 28.9
Drummond	(3) 28.9
Fanchem	(3) 28.9
Real	(3) 28.9
Saratoga	(3) 28.9
Sulbow	(3) 28.9

¹ Cooperative BIA rate.
² No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
³ Non-cooperative BIA rate.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in case briefs and written comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate

entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the review, the Department will issue appraisal instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of elemental sulphur, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, or the less-than-fair-value (LTFV) investigation, the cash deposit rate will be the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established, as discussed below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council v. United States*, 822 F.Supp. 766 (CIT 1993) and *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F.Supp. 782 (CIT 1993) decided that once an "All Others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "All Others" rate from the LTFV investigation (or that rate as amended for correction or clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "All Others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction or clerical errors as a result of litigation) as the "All Others" rate for the purposes of establishing

cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "All Others" rate from the Treasury LTFV investigation, the "All Others" rate for the purposes of this review would normally be the "new shipper" rate established in the first notice of final results of administrative review published by the Department. However, a "new shipper" rate was not established or ascertainable in that notice. Therefore, for the purposes of this review, we have drawn the "All Others" rate of 5.56 percent from the final results of administrative review of this finding conducted by the Department generally for the period December 1, 1980 through November 30, 1982. See *Elemental Sulphur from Canada; Final Results of Administrative Review of Antidumping Finding*, 48 FR 53592 (November 28, 1983).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

Dated: July 17, 1995.

Susan G. Esserman,
Assistant Secretary for Import Administration.

[FR Doc. 95-18136 Filed 7-21-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-840]

Amended Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Manganese Metal From the People's Republic of China

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

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-4198 and 482-1442, respectively.

Scope of Investigation

The scope of this investigation, manganese metal, is fully described in the preliminary determination (see *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Manganese Metal from the People's Republic of China* 60 FR 3182, (June 14, 1995)).

Case History

On June 6, 1995, the Department of Commerce (the Department) made its affirmative preliminary determination of sales at less than fair value in the above-cited investigation concerning subject merchandise from the People's Republic of China. On June 20, 1995, respondents in this investigation, China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corporation (HIED), China Metallurgical Import & Export Hunan Corp. (CMIECHN), and Minmetal Precious & Rare Minerals Import & Export Co. (Minmetal), alleged that the Department made two ministerial errors in the preliminary determinations and requested that the Department correct these ministerial errors accordingly.

Amendment of Preliminary Determination

Since a preliminary determination only establishes estimated margins, which are subject to verification and which may change at the final determination, the Department does not routinely amend preliminary determinations. However, the Department has stated that it will amend a preliminary determination to correct significant ministerial errors (see *Amendment to Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan*, 57 FR 33492 (July 29, 1992).)

In the preliminary determination of this investigation, the calculation of HIED's foreign market value (FMV) double counted material input costs. Additionally, with respect to HIED and the other companies for which margins were calculated, the Department added freight to the input cost of manganese ore. (Note: the addition of freight was despite the fact that the Department determined that freight costs were already reflected in the input cost of manganese ore (see June 6, 1995

concurrency memorandum to the Deputy Assistant Secretary)).

The Department considers the above-referenced errors to be ministerial errors pursuant to 19 CFR 353.28(d) (see June 29, 1995 Clerical Error Memorandum to the Deputy Assistant Secretary). With respect to HIED's original margin at the preliminary determination, the correction of these errors results in a change which is (1) greater than 5 absolute percentage points, and is (2) greater than 25 percent of the margin at the preliminary determination. Accordingly, these errors are considered significant ministerial errors. The ministerial errors alleged by respondents that relate to all other companies are not significant and therefore will not be corrected in this amended preliminary notice.

At the preliminary determination, HIED's margin was the highest calculated margin and was higher than the highest margin in the petition, as recalculated by the Department. Accordingly, HIED's margin was used as the PRC-wide rate. Because Minmetal's margin is now the highest calculated margin and is higher than the highest margin in the petition, as recalculated by the Department, Minmetal's margin is now the PRC-wide rate.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require a cash deposit or posting of bond on all entries of subject merchandise from the People's Republic of China at the rates indicated below, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice. The revised company-specific rate for HIED and the PRC-wide rate, as well as those rates which have not changed are as follows:

Manufacturer/producer/exporter	Margin percent
CEIEC	132.22
CMIECHN/CNIECHN	82.44
HIED	57.18
Minmetal	148.24
PRC-Wide Rate	148.24

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the amended preliminary determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material