Department's Position: Since the respondent's new information about these seven sales was untimely, we have not considered it. OBV's explanation of the reasons for its failure to report the early-payment discount does not excuse such failure. As BIA for these unreported discounts, we have adjusted all sales to this customer for the early payment discount in these final results.

Comment 7: The petitioners argue that the Department should reduce OBV's overstated prices of ESP sales invoiced by American Brass (AB), a company which OCUSA acquired. The petitioners assert that the U.S. verification uncovered discrepancies between the reported prices to one U.S. customer and the amounts shown on invoices from AB. The respondent acknowledges that it misreported these sales by not including further processing costs in the reported unit prices. OBV suggests that the error can be corrected by relying on the total reported sales price, which is not in error, instead of the reported unit price.

Department's Position: We disagree with the petitioners. Since the respondent correctly reported total sales price, it would be unreasonable to apply punitive BIA for the erroneously reported unit prices. Instead, for these final results we have used as the basis for USP the total reported sales price divided by the total reported quantity, less all adjustments, since total price and total quantity were correctly reported.

Comment 8: The petitioners argue that the Department should adjust the respondent's U.S. processing costs to include losses on unaccounted-for merchandise, losses which were reported in revised data submitted at verification.

Department's Position: We agree and have included the revised scrap adjustments for these final results.

Comment 9: The petitioners argue that the Department should disallow OBV's quantity discount claim for home market sales. In rebuttal, OBV argues that it did not request such an adjustment and that the Department did not make such an adjustment.

Department's Position: We agree with OBV. The petitioners are mistaken that we deducted the discount from the home market price; in fact, it was not a requested adjustment, and we did not deduct it from home market price.

Clerical and Programming Errors

Comment 10: The petitioners argue that the Department failed to deduct freight expenses from home market price when conducting the cost test.

Department's Position: We agree and have deducted these freight expenses from home market price for these final results.

Comment 11: The petitioners argue that the Department incorrectly included several below-cost home market sales when calculating FMV. The respondent counters that the petitioners fail to identify which below-cost sales were erroneously included in home market sales, and notes further that it is Department policy to include below-cost sales when less than 10 percent of a model are found to be sold below cost within a particular month.

Department's Position: We disagree with the petitioners. We reviewed the computer program and we are satisfied that we did not consider below-cost sales other than those which were properly included, in calculating FMV.

Comment 12: The petitioners argue that the Department failed to deduct from USP U.S. selling expenses allocated to further manufacturing. The respondent argues that the further processing costs in question are in fact accounted for in the computer program.

Department's Position: We agree with OBV. We included in our analysis those U.S. selling expenses allocated to further manufacturing.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margin exists for OBV for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Percent margin
Outokumpu Copper Rolled Products AB (OBV)	5.20

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

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for OBV will be the rate outlined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate of 16.99 percent established in the LTFV investigation.

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

This administrative review and this 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: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–620 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Circular 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: On November 22, 1994, the Department of Commerce published the

preliminary results of review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covers the period March 1, 1992, through February 28, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–3058/4114.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1994, the Department of Commerce (the Department) published in the Federal Register (59 FR 60128) the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (51 FR 8341, March 11, 1986) for the period March 1, 1992, through February 28, 1993.

Applicable Statute and Regulations

The Department has completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this administrative review are shipments of 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. The item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the order.

The review period is March 1, 1992, through February 28, 1993. This review involves one company, Saha Thai Steel Pipe Company, Ltd. (Saha Thai).

Consumption Tax Methodology

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioners and from Saha Thai. The petitioners in this case are the Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe Company.

Unlike the preliminary results, all margins for these final results were determined using price to price comparisons; therefore, the calculation of foreign market value (FMV) using constructed value (CV) was not necessary. Thus, we have not addressed comments regarding the calculation of CV for these final results.

Comment 1: Petitioners argue that the Department should reverse its preliminary finding that Saha Thai's home market sales of pipe and tube made to American Society of Testing Materials (ASTM) specifications were not in the ordinary course of trade. According to petitioners, the Department's finding is based on analysis contrary to law and lacks factual support.

Petitioners assert that when determining whether sales are outside the ordinary course of trade, the Department considers whether the sales were made for unusual reasons or under unusual circumstances. The purpose of this exercise is to ensure that the sale price is a bona fide, market-determined price that accurately reflects the value of

the merchandise. Petitioners note that the Department has performed an ordinary course of trade analysis when a respondent has demonstrated that certain sales were sample or trial sales, spot sales, sales of damaged merchandise, obsolete or discontinued models, or merchandise resulting from production overruns (overrun sales).

Petitioners argue that only when it has been established that certain sales are overruns will the Department conduct an ordinary course of trade analysis by considering all the circumstances of the sale. Citing *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review,* 56 FR 64753 (December 12, 1991) (*Pipe from India), and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value,* 56 FR 42942 (September 17, 1992) (*Pipe from Korea*), petitioners claim that the Department considers: 1) whether the sales were of overrun merchandise or seconds; 2) the volume of sales and number of buyers; 3) differences in product standards and uses between overrun and ordinary production; and 4) the price and profit differentials between overrun and ordinary merchandise in the home market.

While petitioners acknowledge that under certain conditions the Department has determined overrun sales to be outside the ordinary course of trade (*see Pipe from India*), they note that under other conditions the Department has determined sales of overrun merchandise to be within the ordinary course of trade (*see Pipe from Korea*).

Petitioners argue that none of the reasons stated by the Department in the preliminary results, taken alone or collectively, can support a finding that Saha Thai's ASTM sales were made outside the ordinary course of trade. Furthermore, petitioners contend that since the Department's preliminary analysis only considered the volume of sales and differences in standards and uses between ASTM merchandise and other related goods, it represented only a partial application of the four-part analysis used in *Pipe from India* and *Pipe from Korea.* While petitioners acknowledge that the two factors considered in the preliminary results relate to the existence of a viable separate market for ASTM goods, they argue that such factors should not be considered determinative.

Petitioners argue that Saha Thai must first establish that its home market ASTM sales were not normal commercial transactions. Petitioners assert that Saha Thai claimed only a portion of its home market ASTM sales as overrun production originally intended for export and failed to submit evidence to support its claim. Thus, petitioners conclude that the fundamental threshold condition needed to trigger an ordinary course of trade analysis is lacking. However, petitioners contend that if the Department decides to analyze all home market ASTM sales as potential overruns, it must nevertheless find that such sales were within the ordinary course of trade.

According to petitioners, the record indicates that Saha Thai sells a significant amount of ASTM pipe in the home market. Petitioners claim that such sales are at prices which support rather than detract from the inference that home market ASTM sales are in the ordinary course of trade. Additionally, petitioners argue that Saha Thai's admission that it produced ASTM pipe in response to specific requests by home market customers is further evidence that an indigenous consumer-driven market for ASTM pipe exists, warranting its production and marketing for ordinary commercial reasons. Petitioners argue that while the use of ASTM pipe in the home market may be less common than the use of British Standard (BS) pipe, there is nothing on the record to indicate that the conditions and practices of sale of ASTM pipe were commercially unusual by the standards of the trade for all standard pipe in the home market.

Saha Thai argues that it has met its burden of demonstrating that ASTM sales were outside the ordinary course of trade and that the Department has properly excluded such sales from the calculation of FMV. Saha Thai claims that the four-part test established in *Pipe from India,* and affirmed by the Court of International Trade (CIT) in *Mantex, Inc.* v. *United States,* 841 F. Supp. 1290, 1305–1309 (CIT 1993) (*Mantex*), controls the disposition of the issue before the Department, because it addresses the question of when the sale of pipe not made to the governing local standard can be considered to be within the ordinary course of trade. Saha Thai argues that application of the four-part test to the facts of this case confirms that domestic ASTM sales by Saha Thai were outside the ordinary course of trade.

First, Saha Thai notes that the British standard, not the ASTM standard is the governing standard for pipe sold in Thailand. According to Saha Thai, ASTM pipes are sold in Thailand on the basis of special orders or for special projects in which the entire project is supplied with ASTM pipe. ASTM pipes cannot be used in most piping systems in the home market or to replace existing piping systems except in those limited instances in which an entire project was built to ASTM standards. Saha Thai argues that these same conditions were present in *Pipe from India,* and the CIT upheld the Department's consideration of product use in determining that certain sales were outside the ordinary course of trade. *See Mantex.*

Second, Saha Thai notes that the volume of sales and the number of buyers for ASTM pipe in the home market is significantly smaller than for BS pipe. Saha Thai claims that reliance on low sales volumes and a limited number of buyers in an ordinary course of trade analysis was expressly approved by the CIT in *Mantex.*

Third, Saha Thai claims that the significant price and profit differential between ASTM and BS pipe sold in Thailand is indicative of sales outside the ordinary course of trade. Saha Thai notes that price and profit differentials were considered by the Department in *Pipe from India,* and upheld by the CIT in *Mantex.* Saha Thai acknowledges that, unlike *Pipe from India,* price and profit levels of ASTM pipe in Thailand are substantially higher than domestic standard pipe. However, it argues that it is not important that the prices of ASTM pipe are higher than the local standard, but rather that a significant difference exists. Saha Thai claims that this phenomenon of higher profit and price levels for ASTM pipe is attributable to the very narrow market segment represented by sales of ASTM pipe.

Finally, Saha Thai notes that the value and volume of ASTM pipe produced by Saha Thai is primarily destined for export.

Department's Position: We have determined that, after re-examining the facts on the record in light of the four-factor test of *Mantex,* Saha Thai's sales of ASTM pipe in the home market were not made outside the ordinary course of trade. Therefore, with the exception of ASTM ''punched hole'' irrigation pipe, we have used sales of ASTM pipe in the home market as the basis for FMV in these final results.

As stated in the preliminary results of this review, when determining whether sales were made outside the ordinary course of trade we do not rely on one factor taken in isolation but rather consider all the circumstances surrounding the sales in question. Consistent with *Pipe from India,* and *Pipe from Korea* we have examined for these final results: (1) The different standards and product uses of ASTM

and BS pipe; (2) the comparative volume of sales and number of buyers of ASTM and BS pipe in the home market; (3) the price and profit differentials between ASTM and BS pipe sold in the home market; and (4) the issue of whether ASTM pipe sold in the home market consisted of production overruns or seconds. It should be noted that our examination of the circumstances of the sales in question is not limited to the factors listed above and no one factor is determinative.

While we agree with Saha Thai that there are similarities between this case and *Pipe from India,* there are a number of important factors which distinguish this case. First, there is no information on the record which indicates that the ASTM sales in question are production overruns of merchandise that was originally intended for export. Indeed, the record in this case indicates that Saha Thai produced and sold ASTM pipe in response to specific orders placed by customers in the home market. While sales of merchandise other than overruns may be found to be outside the ordinary course of trade, the fact that the merchandise was produced in response to specific orders indicates that Saha Thai made these ASTM sales under ''conditions and practices * * * which have been normal in the trade under consideration.'' (section 771(15) of the Tariff Act).

Second, while ASTM pipe is less common in the home market than BS pipe, and is not compatible with BS pipe, there is nothing on the record to indicate that ASTM pipe sold in the home market is being used for purposes other than those for which it was intended. Unlike this case, in *Pipe from India,* the Department found that ''customers for ASTM pipe in India used the pipe for a very limited number of purposes *quite different from its intended standard purposes*'' (56 FR at 64755)(emphasis added).

Third, the record indicates that the average sales quantity of ASTM pipe sold in the home market did not differ significantly from the average sales quantity of BS pipe. Furthermore, while the total volume of ASTM sales and the number of customers purchasing ASTM pipe may be small in comparison to BS pipe, the level of ASTM sales activity in the home market is significant enough to dispel the notion that such sales are spot sales, sales of obsolete merchandise or periodic attempts to liquidate ASTM merchandise originally produced for export. Indeed the CIT has clearly stated that ''[w]hether an importer has made sales in the ordinary course of trade depends on whether the importer made the sales under conditions that are normal for the product that is being sold, *not whether the importer normally sells the subject merchandise*.'' *See, East Chilliwack Fruit Growers Co-Operative v. United States,* 11 CIT 104, 108, 655 F.Supp. 499, 504 (1987) (emphasis added).

Fourth, we disagree with Saha Thai that its higher price and profit levels on sales of home market ASTM pipe in comparison to BS pipe indicate that its ASTM sales are outside the ordinary course of trade. Just as it is not a requirement that different price and profit levels be demonstrated in order for sales to be determined outside the ordinary course of trade, (*see, Pipe from India*), the existence of different price and profit levels does not necessarily indicate that sales are outside the ordinary course of trade.

Finally, the fact that Saha Thai produces the majority of ASTM pipe for export does not in any way indicate that the circumstances surrounding its sales of ASTM pipe in the home market are not normal. Unlike *Pipe from India* where it was determined that a ready market did not exist for production overruns of ASTM pipe that was originally produced for export, the record in this case indicates that Saha Thai produces and sells ASTM pipe in the home market specifically in response to orders placed by its home market customers. Such circumstances further indicate that a ready market for ASTM pipe exists in the home market.

As demonstrated above, when the factors are properly considered in their totality, the claimed similarities between *Pipe from India* and this case prove to be unfounded. Therefore, based on the analysis articulated above, we have determined that sales of ASTM pipe in the home market were not made for unusual reasons or under unusual circumstances but rather were made in response to genuine domestic demand. Thus we have included sales of such merchandise in our calculation of FMV for these final results.

Comment 2: Petitioners argue that if the Department finds that home market sales of the identical or most similar merchandise were not made in the contemporaneous 90/60 window, it must use CV as the basis for FMV. Petitioners contend that the Department's decision not to use CV and instead select the next most similar merchandise sold within the 90/60 window violates Department policy.

Petitioners argue that, although it is clear that prices for matched merchandise sold outside the 90/60 window cannot be the basis for FMV, section 773 of the Tariff Act does not allow the Department to redefine such or similar merchandise as another, less similar product sold in the 90/60 window. Petitioners contend that to do so would be to incorrectly read into section 771(16) of the Tariff Act an added requirement that the Department select not only the most similar product under its hierarchy, but also one that was sold in a contemporaneous time frame.

Petitioners argue that the Department has consistently rejected attempts to condition the determination of such or similar on any basis other than similarity of the merchandise. Petitioners note that the Department has explained its policy of matching such and similar merchandise on the basis of the similarity of the merchandise without regard to the results of the test for sales below cost. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360 (June 24, 1992) (*AFBs from France*). Petitioners also argue that, in *Cyanuric Acid and Its Chlorinated Derivatives from Japan Used in the Swimming Pool Trade; Final Determinations of Sales at Less Than Fair Value,* 49 FR 7424 (February 29, 1984) (*Cyanuric Acid*), the Department refused to allow an ordinary course of trade requirement to influence product matching. Additionally, petitioners cite *Timken Co.* v. *United States,* 673 F. Supp. 495 (CIT 1987), and *NTN Bearing Corp.* v. *United States,* 747 F. Supp. 726, 736 (CIT 1990) as support for the practice of disregarding the level of trade at which products are sold and determining similarity solely on the basis of physical similarity. Finally, petitioners contend that, in *Color Television Receivers from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review,* 58 FR 52262 (October 7, 1993) (*CTVs from Korea*), the Department refused to consider matching sales to the next most similar merchandise, and instead based FMV on CV, when sales of the identical or most similar merchandise were not made in a contemporaneous time frame.

Therefore, petitioners contend that the preliminary decision to allow the timing of the home market sale to influence the selection of identical or similar merchandise is inconsistent with the Department's practice of identifying such or similar merchandise solely on the basis of physical characteristics and using CV as the basis for FMV when such sales are disqualified due to other reasons.

Saha Thai argues that there is no support in either the statute or case law for petitioners' argument. Saha Thai argues that the statute does not require that the Department first determine which merchandise is such or similar and then determine if sales of that merchandise are contemporaneous.

Saha Thai argues that the preliminary results need not be read as applying section 771(16) of the Tariff Act to determine such or similar merchandise a second time after concluding that certain sales originally determined to be such or similar were made outside the 90/60 window. Rather, Saha Thai asserts, it can just as easily be interpreted as applying section 771(16) only once after excluding merchandise sold outside the 90/60 window.

Additionally, Saha Thai contends that the cases cited by petitioners are not on point. According to Saha Thai, in *AFBs from France* the Department merely determined that it will not search for such or similar merchandise a second time after the identical or most similar merchandise is determined to be below cost. The Department did not address the issue of whether sales outside the 90/60 window could be designated as such or similar merchandise. Additionally, Saha Thai claims that petitioners' reliance on *Cyanuric Acid* is similarly misguided. According to Saha Thai, the Department determined in *Cyanuric Acid* that the sales in dispute were sold in the ordinary course of trade; otherwise, it could not have used them as FMV. Finally, Saha Thai argues that, aside from the fact that *CTVs from Korea* was a preliminary decision, it is not clear in that case that there were other contemporaneous sales of similar models available for comparison. According to Saha Thai, it is conceivable that, after application of the cost test, there were no sales of similar models to compare to the U.S. sales, forcing the Department to resort to CV.

Saha Thai contends that a clearer statement of the Department's policy may be found in *Certain Forged Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 56 FR 5975, 5977 (February 14, 1991), where the Department stated that ''when there were no contemporaneous sales of the most similar home market model to compare to sales of a U.S. model, we examined the other similar models for contemporaneity.'' Saha Thai argues that not only is the Department's methodology in the preliminary determination consistent with the above-cited case, it is also consistent with previous administrative reviews concerning this product.

Department's Position: We disagree with petitioners' argument that by limiting our search for such or similar merchandise to those home market sales made within the contemporaneous 90/60 window, we are inappropriately conditioning the selection of such or similar merchandise on factors other than the physical characteristics of the merchandise.

In accordance with section 773(a)(1) of the Tariff Act, we must compare contemporaneous sales of such or similar merchandise. Accordingly, in making comparisons we must do so based on both the physical characteristics of the merchandise and the timing of the sales, since we are matching sales to sales, and not simply models to models. Thus, the timing of the sales limits the universe from which we make our selection. In contrast, the test for sales below cost is a test applied, when warranted, to the universe of sales selected under section 773(a)(1).

The Department has implemented the contemporaneous 90/60 window in order to fulfill the statutory requirements in section 773(a)(1) of the Tariff Act that FMV be based on the price of contemporaneous sales of such or similar merchandise. *See, Final Results of Antidumping Duty Administrative Review; Certain Valves and Connections, of Brass, for Use in Fire Protection Systems from Italy*, 56 FR 5388 (February 11, 1991).

Therefore, for these final results we will continue to base our selection of such or similar merchandise on the physical characteristics of the merchandise. However, consistent with established Department practice, we will also continue to limit the universe of sales from which we select the comparison model to those sales made during the contemporaneous 90/60 window.

Comment 3: Petitioners argue that the Department erred in making a circumstance-of-sale (COS) adjustment for warranty expenses Saha Thai claims it incurred on U.S. sales. Petitioners contend that Saha Thai failed to provide sufficient evidence to support its characterization of this expense as a warranty expense. Petitioners assert that the evidence on the record suggests that this expense was actually a discount that should be deducted from U.S. price (USP), rather than added to FMV.

Petitioners also argue that Saha Thai's allocation of this expense was faulty because: (1) The expense was allocated over sales made prior to the period of review, and (2) the expense was allocated over all U.S. sales despite the fact that sales-specific data was available.

Saha Thai argues that it provided ample evidence in both its original and supplemental questionnaire responses to substantiate its claim that the expenses in question were *bona fide* warranty expenses. Additionally, Saha Thai argues that the Department incorrectly classified its warranty expenses as direct selling expenses. According to Saha Thai, such expenses should be classified as indirect, and no adjustment should be made to USP since all U.S. sales were purchase price transactions within the meaning of section 772(b) of the Tariff Act.

Saha Thai contends that, because its warranty expense was unanticipated at the time of the sale and has not been repeated since, it should be classified, according to established Department practice, as an indirect selling expense. Additionally, Saha Thai notes that warranty payments made during the POR are normally considered direct expenses only when such payments are indicative of warranty expenses that will likely be incurred later with regard to sales made during the period of review. Saha Thai notes that warranty claims are not anticipated at the time of the sale because the merchandise under review is manufactured to internationally recognized standards.

Saha Thai asserts that, if the Department determines that its reported warranty expenses are direct expenses, it should employ for these final results the allocation methodology used in the preliminary determination. According to Saha Thai, allocating the warranty expenses over all sales during the 1987–92 period provides the best information available for the eventual warranty costs for sales in 1992. In addition, Saha Thai argues that allocating warranty expenses over all of its sales from 1987–1992 avoids the disproportionate allocation of the expenses to the relatively low export volume in 1992.

Department's Position: It is the Department's practice to allow only those expenses related to quality-based complaints to be classified as a warranty expense. *See, Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon From Norway*, 56 FR 7661 (February 25, 1991). Because the record indicates that Saha Thai's payments are in response to a quality-based complaint, we disagree with petitioners that the expense should be classified as a discount, and have continued to classify it as a warranty expense. Additionally, since the warranty expenses incurred by Saha Thai are variable expenses, we have continued to classify them as direct selling expenses.

Furthermore, regarding the proper allocation methodology, since warranty expenses associated with subject merchandise sold during the POR are usually not identifiable until well after the POR, it is the Department's general practice to make a COS adjustment using warranty expenses incurred during the period as the best available information for future warranty claims. *See, Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 12701 (1991). However, where there are special circumstances, the Department has accepted alternative calculation methodologies that provide a reasonable estimate of future warranty expenses associated with sales made during the POR. *See, Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan*, 55 FR 335 (1990). In the instant case, we agree with Saha Thai that allocating its current warranty expenses over the relatively low export volume in this review would likely result in an overstated warranty adjustment. Such an approach would be inappropriate because it would not provide an accurate prediction of the warranty expenses that are likely to be incurred in the future on sales made during the POR. Therefore, we have accepted Saha Thai's methodology of allocating warranty expenses incurred over the past five years over sales made during the past five years as a reasonable estimate of future warranty expenses that will be incurred on sales made during the POR.

Comment 4: Petitioners argue that the Department erred in making a duty drawback adjustment to USP. Petitioners argue that Saha Thai is not entitled to a duty drawback adjustment because it provided no evidence that the drawback it receives is based on duties paid on materials which are suitable for use in those ASTM products exported. Petitioners also argue that if the Department grants the duty drawback adjustment, it should be reduced to a lesser amount than that claimed by Saha Thai because there is evidence that Saha Thai's claimed amount is not representative of the actual duties paid on coil incorporated into the exported pipe.

Saha Thai argues that it has provided adequate information to support its claimed duty drawback adjustment and its method of calculation and that the duty drawback adjustments claimed in the 1987–88 and 1988–89 reviews were granted in full. Additionally, Saha Thai argues that petitioners' analysis of Saha Thai's duty drawback claim is flawed because it failed to account for the fact that Saha Thai sources some of its material inputs from domestic suppliers. This flaw, Saha Thai argues, invalidates the petitioner's argument.

Department's Position: We disagree with petitioners' argument that Saha Thai's reported duty drawback adjustment should be disallowed. Saha Thai provided in its questionnaire response an adequate explanation and demonstration of how it calculated the reported duty drawback adjustment. Additionally, we agree with Saha Thai that petitioners' estimate of its duty drawback appears flawed because it failed to account for the fact that Saha Thai sources some of its material inputs from domestic suppliers. Furthermore, because there is no information on the record to indicate that the drawback Saha Thai receives on duties paid on materials used in the production of ASTM products differs from other materials, there is no basis to deny Saha Thai's duty drawback adjustment on such grounds.

Comment 5: Petitioners and Saha Thai agree that the Department misread the computer data in the field OCNFRTP (ocean freight). Petitioners request that this error be corrected for these final results of review.

Department's Position: We agree that we misread the computer data in the OCNFRTP field, and have corrected this error for these final results of review.

Comment 6: Petitioners assert that Saha Thai incorrectly allocated its home market freight expenses and therefore no delivery charges should be deducted from the home market price. According to petitioners, Saha Thai's allocation methodology is flawed because it assumes that each sale, regardless of the delivery location, has the same inland freight costs. Additionally, petitioners argue that the methodology used to calculate freight expenses assumes that pipe and steel sheets have the same cost per ton for delivery. Finally, petitioners assert that Saha Thai has not indicated whether it delivers its own products or hires outside parties to deliver pipe. Petitioners argue that if an outside delivery service is used, there is no evidence on the record of the tariffs of the outside company and hence no basis for making the adjustment.

Saha Thai asserts that, in its supplemental response, it provided a complete explanation as to why calculation of an average cost per ton is accurate. Additionally, Saha Thai notes that it clearly stated in its supplemental response that it uses an outside delivery service.

Department's Position: Saha Thai stated in its November 15, 1993, supplemental response that it ''engages an outside delivery service at a fixed fee per truck per day, plus an overcharge when the weight loaded in the truck exceeds a specified maximum'' (p.6). We have determined that, based on the manner in which Saha Thai incurs its home market freight expenses, an allocation methodology based on weight is a reasonable calculation of Saha Thai's per-unit freight cost. Therefore, we have accepted Saha Thai's reported home market freight expenses for these final results.

Comment 7: Petitioners contend that Saha Thai's reported home market packing costs have not been properly allocated. According to petitioners, the allocation is incorrect because it does not account for the different number of pieces per ton and the different number of tons per bundle. Petitioners argue that packing costs should be allocated by the number of pieces packed since each size of pipe has a different number of pieces per ton, requiring a different amount of handling, materials and overhead expenses for packing.

Petitioners also argue that Saha Thai's packing labor allocation methodology fails to account for the fact that black, threaded and coupled pipe and all galvanized pipe for export receives plastic packing, while home market sales do not. As a result, petitioners argue, total packing labor costs are over-allocated to home market sales. Finally, petitioners contend that the preliminary results fail to account for any overhead in packing expenses.

Saha Thai argues that its allocation of packing costs is reasonable and that petitioners' comments raise issues that are normally addressed in a deficiency questionnaire or at verification. Additionally, Saha Thai notes that, with the exception of wrapping each end of pipe for export with plastic wrap, all three kinds of pipe (export black, export galvanized, and domestic galvanized) receive the same type of packing.

Department's Position: Saha Thai's methodology for calculating its packing expenses is consistent with the methodology verified and accepted by the Department in previous reviews. Furthermore, the record in this review does not indicate that Saha Thai's packing allocation methodology distorts our antidumping calculations. Therefore, we have accepted Saha Thai's reported packing expenses for these final results.

Comment 8: Petitioners argue that the annual coil purchase quantity that Saha Thai reported in its November 15, 1993, deficiency response at exhibit 12A is inconsistent with the monthly coil purchase quantities Saha Thai reported elsewhere in its deficiency response.

Because of this discrepancy, petitioners argue that the Department should reject Saha Thai's cost calculation, or, in the alternative, recalculate Saha Thai's coil costs based on the monthly purchase data.

Saha Thai agrees that there is an error in exhibit 12A of its deficiency response, but argues it was a clerical error committed while preparing exhibit 12A and not an indication of inconsistencies in its accounting data. Saha Thai further argues that the error in exhibit 12A is easily correctable.

Department's Position: The information on the record indicates that Saha Thai committed a clerical error when compiling the annual coil purchase amounts in exhibit 12A of its deficiency response. Therefore, for these final results, we have recalculated Saha Thai's annual coil purchase amounts using the 1992 monthly coil purchase amounts found in exhibit 11A of its November 13, 1993 deficiency response.

Comment 9: Petitioners argue that the Department erred in allowing a credit to Saha Thai's material costs for revenue derived from the sale of flat bar. Petitioners argue that Saha Thai has presented no new information that should cause the Department to change its determination in the most recent administrative review of Saha Thai that flat bar is not a by-product of the manufacture of pipe and tube, but is instead a product resulting from further manufacture of steel scrap. *See Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 57 FR 38668, 38669, (August 26, 1992). Therefore, petitioners argue, the Department should allow a credit only for revenue derived from the sale of steel scrap, and not from the sale of flat bar.

Saha Thai acknowledges that the Department denied the flat bar credit in the 88–89 review, but argues that it should accept it in this review because flat bar qualifies as a by-product under the criteria articulated in *Titanium Sponge from Japan*, 51 FR 45495, 45496 (December 19, 1986), *Frozen Concentrated Orange Juice from Brazil, Final Determination of Sales at Less than Fair Value*, 52 FR 8324 (March 17, 1987), and *Fall Harvested White Potatoes from Canada, Final Determination of Sales at Less than Fair Value*, 48 FR 51660, 51673–74 (November 10, 1983). Saha Thai argues that the Department should consider the fact that, during the administrative review, it was unable to recover its costs through its sales of flat bar. In addition, its sales of flat bar were minuscule in comparison to its sales of pipe.

Finally, Saha Thai notes that it included in its submitted pipe costs the costs of coil used to produce flat bar. Therefore, Saha Thai argues, if the Department finds that flat bar is a co-product and declines to offset its pipe production costs for revenues realized on the sale of flat bar, it must remove the coil costs attributable to flat bar from its reported coil cost for the production of pipe and tube.

Department's Position: We agree with petitioners. The Department determined in the 1987–88 and 1988–89 administrative reviews that flat bar sold by Saha Thai is properly considered a co-product, not a by-product, of the steel pipe production process. Further, in response to the remand order issued by the CIT pursuant to *Saha Thai Steel Pipe Co., Ltd.* v. *United States*, Slip Op. 95–21 (CIT February 14, 1995), the Department submitted a redetermination maintaining that flat bar is properly considered a co-product. In that redetermination the Department explained that flat bar produced by Saha Thai is properly considered a co-product because: (1) Saha Thai accounts for flat bar as a separate finished product; (2) the production of flat bar is not an unavoidable consequence of producing the subject merchandise; (3) Saha Thai intentionally controls the production of flat bar and markets it as a separate end product; (4) significant further processing of the scrap is necessary for sale as flat bar, and; (5) flat bar and the subject merchandise are produced on separate machines. Because the facts in this review do not differ from the facts in the previous reviews, we have determined, consistent with the previous reviews, to treat the production of flat bar as a co-product for these final results. Therefore we have corrected Saha Thai's reported coil costs by adjusting the yield loss and by-product credit attributable to flat bar.

Comment 10: Petitioners argue that the Department should not allow Saha Thai to deduct the weight of zinc and coupling from the weight of pipe when calculating coil costs. According to petitioners, the record demonstrates that the weight of zinc and coupling is not included in the reported weight of the pipe in the first place, therefore deducting an amount for zinc and coupling results in an understatement of the true amount of coil consumed in the production of galvanized or threaded and coupled pipe.

According to petitioners, Saha Thai submitted a single unit weight for each size of pipe, without differentiation for being black plain-end, galvanized, or coupled and threaded. Petitioners assert that this is because the unit weight is based on the pipe's weight at the forming stage when all pipe is black plain-end. According to petitioners, the steel consumed in producing black plain-end, galvanized, or threaded and coupled pipe weighs exactly the same. Therefore, petitioners contend, any further finishing such as galvanization and threading and coupling represents extra weight, above the weight of the black plain-end pipe recorded in Saha Thai's records. Petitioners request that for these final results of review the Department deny Saha Thai an adjustment for zinc and coupling weight and base the cost of production (COP) and CV calculations on unadjusted coil cost data.

Saha Thai argues that, consistent with previous administrative reviews, the Department should make an adjustment to coil costs for the weight of zinc and coupling. Saha Thai argues that its coil costs are computed on an actual weight basis because it purchases coil on an actual weight basis. Saha Thai contends that in building up the cost per ton on an actual weight basis, it is necessary to take account of the fact that a portion of an actual ton of galvanized, or coupled and threaded pipe is attributable to zinc coating and/or coupling. Saha Thai asserts that in order to identify the amount of coil in an actual ton of pipe it is necessary to first remove from the total actual weight any amounts attributable to zinc and coupling.

Saha Thai further explains that its coupling weight adjustment is made entirely on a theoretical basis. According to Saha Thai, it takes into account the fact that in one theoretical weight ton of threaded and coupled pipe a portion of the ton is attributable to the weight of the coupling. For example, due to the weight of coupling, the standard theoretical weight of a two inch plain-end pipe is less than the standard theoretical weight of a two inch threaded and coupled pipe. Therefore, Saha Thai argues, the calculation of the COP must take into account the fact that, in one theoretical ton of threaded and coupled pipe, there is less than one ton of coil.

Department's Position: We disagree with petitioners. It is necessary to adjust the coil costs to produce a theoretical ton of black, plain-end pipe when calculating the coil costs to produce a theoretical ton of galvanized and/or threaded and coupled pipe. This is because, unlike black, plain-end pipe, a portion of the weight of a ton of galvanized and/or threaded and coupled pipe is attributable to the weight of zinc and coupling. Therefore, for these final results we have continued to accept Saha Thai's downward adjustment to

coil costs used to produce galvanized and/or threaded and coupled pipe.

Comment 11: Petitioners argue that even if the Department determines that a zinc adjustment is valid, it still must deny such an adjustment because the methodology used by Saha Thai grossly overstates the weight of zinc on the pipe. According to petitioners, Saha Thai calculated the weight of zinc on the pipe by allocating total net zinc consumed over the entire surface area galvanized. Petitioners assert that it is clear from Saha Thai's reported zinc unit cost calculation that while the reported zinc consumed is net of excess zinc termed dross and ash, it fails to net out a significant quantity of excess zinc, known in the industry as coarse and fine dust. Petitioners argue that Saha Thai has completely ignored this substantial source of zinc loss and thus overstated the amount of zinc on the pipe and understated the claimed coil weight.

Petitioners claim that its argument that Saha Thai's zinc weight claim is overstated is supported by Saha Thai's own records which indicate that it coats both ASTM and BS pipe with the same amount of zinc. Petitioners argue that it is not credible that Saha Thai would coat both ASTM and BS pipe with the same thickness of zinc, given the wide difference in the two industry standards, the high cost of zinc, and the fact that Saha Thai can easily control the amount of zinc on the pipe. Petitioners assert that comparison of zinc usage by an efficient domestic producer of galvanized standard pipe to Saha Thai's reported zinc usage demonstrates that Saha Thai's calculation of zinc use produces results that are clearly excessive. Petitioners assert that the Department should use as the best information available (BIA) within the meaning of section 776(c) of the Tariff Act, the standard weight of zinc as set by ASTM and BS product specifications.

Saha Thai contends that petitioners' arguments are unsupported by the record. Saha Thai questions the usefulness of petitioners' analysis of a domestic producer's zinc recovery rates without evidence that the recovery rates experienced by the domestic producer are comparable to Saha Thai's experience. Saha Thai also argues that petitioners' claim that Saha Thai does not recover zinc dust as a by-product is unsupported by the record. According to Saha Thai, there is no proof that Saha Thai does not include zinc dust in what it calls ash. Finally, Saha Thai does not dispute the fact that its zinc coating weight exceeds the standard coating weight, and asserts that petitioners claims regarding the credibility of its zinc usage are more properly addressed through a deficiency questionnaire or at verification.

Department's Position: We disagree with petitioners' argument that the record indicates that the methodology used by Saha Thai grossly overstates the weight of zinc on the pipe. The fact that Saha Thai's zinc recovery rates are not comparable to those of a domestic producer does not serve as the basis for disregarding Saha Thai's methodology and resorting to BIA. Furthermore, the Department verified and accepted the same methodology used by Saha Thai to report zinc costs in the 1987–88 administrative review. *See, Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 56 FR 58355 (November 19, 1991). Therefore, we have continued to accept Saha Thai's reported zinc costs for these final results of review.

Comment 12: Petitioners argue that Saha Thai improperly deducted the interest expenses on coil purchases from its cost of materials and included them in the pool of selling, general and administrative (SG&A) expenses. Petitioners argue that these expenses are part of the acquisition cost of the coil and are not a general expense of the company as claimed by Saha Thai.

Petitioners claim that the Department's practice is to calculate the COP based on generally accepted accounting principles (GAAP) in the home market as long as these principles do not significantly distort the firm's financial position or actual costs. According to petitioners, the record indicates that GAAP in the home market requires that interest expenses on Saha Thai's coil purchases be allocated to the cost of manufacture (COM), not SG&A. While petitioners acknowledge that the Department allowed financing charges to be classified as general expenses in the original investigation, they argue that because such a finding does not comport with the practice of basing cost methodology on the GAAP of the home market, it must be ignored. Additionally, petitioners assert that the finding in the original investigation does not control in this case because the facts on the record indicate that these interest expenses are not a fungible expense but rather are an integral part of the coil price and thus are tied directly to the coil cost.

Saha Thai asserts that because reliance on home market GAAP would significantly reduce its SG&A expenses and therefore distort its actual costs, the Department should remain consistent with the original investigation and allow it to classify financing costs as general expenses. Saha Thai argues that had it chosen to finance its purchases of coil through a bank or some third party the interest expenses would have automatically been included in SG&A. The fact that financing in this instance was received from a supplier does not change its character from interest expense into raw material costs. According to Saha Thai, it is still a financial cost associated with paying its suppliers on other than a sight basis, and as such, a general expense of the corporation. Saha Thai claims that petitioners' arguments fail to distinguish this review from the original investigation and that the financing is fungible in the sense that obtaining seller financing relieves it of the obligation to secure financing elsewhere.

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

Comment 13: Petitioners argue that Saha Thai is not entitled to an adjustment to coil costs for alleged differences between actual and theoretical weights of pipe. Petitioners contend that if the Department determines that such an adjustment is appropriate, it must be recalculated on a product-by-product basis in order to avoid distortions caused by averaging.

Petitioners argue that Saha Thai's adjustment is distorted because it based the actual pipe weight used in the adjustment calculation on the nominal invoiced thickness of the coil rather than the actual scale weight of the coil consumed to produce the pipe. Petitioners also argue that Saha Thai's application of a single average adjustment factor across all products should be rejected because it is clear from the record that: (1) Saha Thai could have provided the factor on a

product-by-product basis, and (2) the difference between Saha Thai's reported actual and theoretical pipe weights varies greatly from product to product and size to size. Petitioners further contend that Saha Thai's methodology does not account for build-up in the wall thickness of the coil that occurs in the production process. Finally petitioners allege that many of Saha Thai's arithmetic calculations of actual and theoretical weights used in the adjustment calculation are incorrect.

Saha Thai responds that since home market and U.S. prices are divided by theoretical weights and coil costs are initially calculated on an actual weight basis, an adjustment must be made to convert coil costs to a theoretical weight basis. Saha Thai argues that it calculated the actual weight of the coil by multiplying the thickness, width and length of the coil by a factor that represents the weight of the steel per cubic meter. Saha Thai contends that this is the standard method in the steel business of calculating the weight of a coil. Saha Thai contends that there is no evidence that it used nominal thicknesses as opposed to actual thicknesses in making its calculation. Saha Thai contends further that, even if it did use nominal thicknesses, there is no evidence on the record to support petitioners claim that such a methodology would result in variations that would have a meaningful effect on the calculation. Finally, Saha Thai asserts that the use of average variances is an accepted practice in cost accounting and the Department did not request that it submit more detailed calculations. Saha Thai contends that petitioners' request for a product-by-product calculation is simply aimed at increasing the burden on respondent.

Department's Position: We disagree with petitioners' argument that Saha Thai is not entitled to a theoretical weight adjustment. Since Saha Thai's U.S. and home market prices are reported on a theoretical weight basis, it is necessary to convert Saha Thai's coil costs, which are initially calculated on an actual weight basis, to a theoretical weight basis. Furthermore, while we acknowledge that the actual thickness of the steel coils used in production may be different than the nominal thickness, within allowable tolerances, and that the production process may have an effect on the thickness of the pipe, there is no information on the record to indicate that these calculations necessarily understate the actual weight of the pipe, and thus the cost. Absent evidence that the calculation methodology distorts the dumping calculation, we will not disregard Saha Thai's approach and resort to BIA. *See, Pipe and Tube from Korea.* However, we agree with petitioners that the use of a single average adjustment factor across all products does not provide an accurate reflection of the weight variances. Therefore, for these final results, we have recalculated Saha Thai's reported material costs using a grade-specific theoretical weight adjustment (corrected for any computational errors).

Comment 14: Petitioners argue that Saha Thai has improperly included value-added taxes (VAT) paid on the purchases of raw material inputs and variable overhead items in the calculation of SG&A. Petitioners argue that since such expenses are incurred directly in relation to production, it is clearly not an SG&A expense and should be included in the calculation of the cost of manufacturing.

Petitioners also assert that Saha Thai's improper classification of VAT taxes also results in the Department having no accurate method to determine difference in merchandise adjustments from Saha Thai's reported variable cost information. Petitioners suggest that, if the Department does not reject Saha Thai's submitted cost data, it must increase the reported cost of manufacture and difference in merchandise data to account for the VAT taxes and decrease the reported SG&A expenses by the same amount.

Saha Thai responds that it properly characterized VAT as an SG&A expense. Saha Thai explains that the net VAT it pays to the government is equal to the excess of the amount of VAT collected from customers over the amount of VAT paid to suppliers. Thus Saha Thai claims that the VAT is not a tax on raw materials, it is a tax on the value added by Saha-Thai's manufacturing operations and therefore does not belong in the cost of goods sold or the cost of manufacturing.

Department's Position: We agree with Saha Thai that VAT is a tax on the value added by its manufacturing operations. For example, if a company buys materials for $100, adds value to those materials and sells them for $120 in a country with a VAT rate of ten percent, that company would pay ten dollars VAT on its material purchases and collect $12 VAT on its sales. The difference of $2 represents the tax on the value-added operations of the company. Furthermore, the company would be required to pay the $2 difference to the government. Due to this fact, there is no net VAT expense incurred as all VAT paid to the government is the difference between VAT payments for raw materials and VAT collections on sales. Therefore, no VAT has been included in the calculation of COP for these final results.

Comment 15: Petitioners claim that Saha Thai should have allocated varnishing material costs by surface area rather than by tonnage produced. Petitioners claim that since the surface area per ton varies with the size of the pipe being varnished, only an allocation by surface area accurately reflects Saha Thai's varnishing material costs. Petitioners claim that Saha Thai has the information necessary to perform such an allocation and should have done so in its response.

Saha Thai claims that it already reallocated its varnishing material expenses by surface area in its supplemental response. Saha Thai explains that while it failed to note this change in the narrative text, it was included in exhibit 10 of the supplemental response, the corresponding cost build-ups and in a subsequent letter to the Department dated November 24, 1993.

Department's Position: We agree with petitioners that varnishing expenses should be allocated according to surface area. However, because Saha Thai allocated varnishing expenses in this manner in its supplemental response, there is no need to recalculate varnishing expenses for these final results.

Comment 16: Petitioners claim that Saha Thai failed to include certain variable production costs on the computer tape it submitted and that the Department did not input the corrected values for the preliminary results. Petitioners argue that, because it is not the Department's responsibility to manually input data that should have been submitted by the respondent in the first place, and because there are numerous other deficiencies in the submitted cost data, the Department should reject the entire cost response and base these final results on BIA. At the very least, petitioners request that the Department correct Saha Thai's costs for these final results.

Saha Thai acknowledges that certain costs were excluded from the final cost build-up submitted to the Department and notes that the Department was informed of this inadvertent omission in a letter filed shortly after its supplemental response. Saha Thai argues that, since it immediately offered to correct its response, and the information necessary to make the correction is already on the record, its cost response should not be rejected and the Department should input the corrected data for these final results.

Department's Position: We disagree with petitioners that we should base these final results on BIA. Because Saha Thai immediately informed the Department of the cost calculation error in its supplemental response, and correction of the error does not place an undue burden on the Department, we have corrected the error for these final results by including those costs that were originally excluded from Saha Thai's original cost build-up.

Comment 17: In addition to their comments regarding the treatment of VAT and interest expenses on material purchases, petitioners claim that Saha Thai's reported SG&A expenses used in the calculation of COP and CV have been allocated incorrectly. According to petitioners, a portion of Saha Thai's reported SG&A expenses consist of expenses incurred only on home market sales and thus are improperly allocated over the cost of goods for both home market and export sales. Petitioners also claim that the cost of goods sold over which SG&A expenses are allocated should not be increased by the reverse drawback credit since, by definition, drawback is received only on exported pipe. Petitioners contend that due to the numerous deficiencies in Saha Thai's SG&A calculation, the Department must either reject the cost and CV information in its entirety or apply BIA to the SG&A calculation.

Saha Thai claims that petitioners arguments regarding the calculation of SG&A are meritless. Saha Thai asserts that petitioner has offered no proof to support the claim that it has improperly allocated SG&A expenses. Additionally, Saha Thai argues that since the product-specific COM to which the SG&A factor is applied includes full import duties, it is proper to add those duties to the cost of goods sold (COGS) used in the denominator of the SG&A calculation. Saha Thai argues that the fact that duties drawn back relate to production for export, not for domestic consumption, is irrelevant. What is important, according to Saha Thai, is that the denominator used in the calculation of the SG&A factor corresponds to the build-up of the product COM to which the SG&A factor will be applied.

Department's Position: For an explanation of our treatment of VAT and interest expenses in calculating COP for these final results, please refer to our response to *Comment 14* and *Comment 12* respectively. We disagree with petitioners assertion that Saha Thai's allocation of its SG&A expenses results in an understated SG&A expense factor. Saha Thai allocated SG&A expenses over the cost of sales to which they applied. Furthermore, because the COM to which the SG&A factor is applied is duty inclusive, it is proper, when calculating COP, to include such duties in the COGS.

Comment 18: Petitioner argues that the Department should not have removed from the home market data base any sales for which Saha Thai failed to submit cost information. Petitioners argue that rather than remove such sales from the dumping analysis, which potentially rewards a respondent for failure to provide information, any matches to such sales should be based on BIA.

Saha Thai acknowledges that it did not provide cost information for one home market sale. Saha Thai also notes that the model for which cost data was missing was not sold in the United States and was not used as FMV for any of the Department's price comparisons.

Department's Position: We agree with petitioners and have not removed any sales from the home market data base for which Saha Thai failed to submit cost information. However, since no U.S. sales matched to such sales, it was not necessary to calculate a margin using BIA.

Comment 19: Petitioners claim that a comparison of Saha Thai's reported profit levels on the subject merchandise under review compared to the profitability reported in its financial statement clearly indicates that Saha Thai's reported costs for subject merchandise are inaccurate. Petitioners claim that in a review where no verification is performed and the Department must base its determination solely on information on the record, a discrepancy of the type demonstrated by the petitioners' analysis should be the basis for completely rejecting the cost response.

Saha Thai asserts that petitioners claims are false and that there are three significant problems with petitioners' analysis. According to Saha Thai: (1) Petitioners failed to take account of the effect of drawback on export profits; (2) petitioners applied the incorrect SG&A ratio to export sales in calculating net export profits; and (3) petitioners failed to deduct warranty expenses from export profits. Saha Thai claims that, when these corrections are made, petitioners' calculations yield an overall profit that is within one half of one percent of the net profit shown in Saha Thai's 1992 financial statement.

Department's Position: We have concluded that, for the reasons stated in Saha Thai's comment, petitioners' analysis is flawed and Saha Thai's reported profit levels are comparable to the profitability reported in its financial statements. While it has been necessary to make certain corrections to Saha Thai's cost response, we disagree with petitioners that the record indicates discrepancies that warrant its complete rejection. Therefore, with the exception of corrections noted in these final results, we have used Saha Thai's cost response in our calculations.

Comment 20: Saha Thai contends that, in cases such as this, where there are parallel antidumping and countervailing duty proceedings, USP, and thus any dumping margins, must be determined by making an adjustment pursuant to section 772(d)(1)(D) of the Tariff Act for countervailing duties imposed. Accordingly, Saha Thai argues that the cash deposit rate, which is based on the dumping margin of U.S. sales during the period of review, must also reflect the adjustment for countervailing duties imposed on the merchandise sold during the period. Saha Thai notes that the preliminary results provide for a prospective adjustment to the final liquidation rates by the U.S. Customs Service to account for countervailing duties that have yet to be determined. However, Saha Thai argues that there are two problems with the Department's proposed solution. First, Saha Thai claims that it will result in the establishment of an antidumping duty cash deposit rate that exceeds the dumping margin found on sales during the administrative review. Second, it improperly delegates to the U.S. Customs Service responsibility for calculating the final amount of the duty and deprives Saha Thai of the opportunity to review the final duty calculations for accuracy. Saha Thai argues that if the Department is to act in accordance with the statute it has two alternatives. The Department can either expedite the parallel countervailing duty review and link the two reviews so that their final results are published at the same time, or it can adjust the antidumping cash deposit rate by the amount of countervailing duties to offset export subsidies imposed in the most recent final countervailing duty administrative review.

Petitioners respond that the statute and the Department's regulations provide that USP shall be increased by the amount of any countervailing duty *imposed* on the merchandise to offset an export subsidy (772(d)(1)(D) of the Tariff Act and 19 CFR 353.41(d)(iv)). Arguing that assessed and imposed are synonymous terms, petitioners contend that, since no countervailing duties have been assessed on the subject merchandise, Saha Thai is incorrect in asserting that an adjustment is required by the statute. Petitioners support the

Department's preliminary decision to delay liquidation of entries until the countervailing duty review is completed and instruct the U.S. Customs Service to reduce antidumping duties collected by the amount of countervailing duties to the extent such duties are based on export subsidies. According to petitioners, the arithmetic task of reducing antidumping duties by the amount of countervailing duties is a simple ministerial act well within the U.S. Customs Services' authority and is not an improper delegation of authority that denies significant rights to Saha Thai.

Department's Position: Section 772(d)(1)(D) of the Tariff Act authorizes the Department to make an upward adjustment to USP for ''the amount of any countervailing duty imposed on the merchandise* * *to offset an export subsidy.'' The Department has interpreted this language to mean that it will make an upward adjustment to USP only if the U.S. Customs Service has actually assessed countervailing duties on the U.S. sales examined in an administrative review. *See, Pipe and Tube from Turkey; Final Results of Antidumping Administrative Review*, 53 FR 39632 (October 11, 1988). *See also, Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989). The CIT has endorsed the Department's interpretation. *See, Serampore Industries Pvt., Ltd.* v. *United States*, 65 F. Supp. 1354 (1987).

For assessment of antidumping duties on merchandise subject to this review, we will increase the USP by the amount of assessed countervailing duties attributable to the export subsidies found in the current countervailing duty reviews. We will calculate the potential uncollected dumping duties (PUDD) using this increased USP. *See, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992).

This administrative review covers the period March 1, 1992 through February 28, 1993. The Department recently completed the corresponding countervailing duty administrative review covering the period January 1, 1992, through December 31, 1992. *See, Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Countervailing Duty Administrative Review*, 60 FR 33791 (June 29, 1995). However, the countervailing duty review for the period January 1, 1993, through December 31, 1993, has not yet been completed. Therefore, there is not yet a countervailing duty assessment rate for the last two months of this review period (January 1, 1993, through February 28, 1993) by which to adjust the assessment of antidumping duties to account for export subsidies. However, liquidation of entries during those two months is suspended until the final results of the countervailing duty review. Therefore, we will not forward to the U.S. Customs Service assessment rates for entries of the subject merchandise from Thailand during that two month period until issuance of the final results of the next countervailing duty review.

The antidumping duty cash deposit rate established in this review will be reduced by 0.73 percent which is Saha Thai's current countervailing duty cash deposit rate attributable to export subsidies. Upon completion of the next countervailing duty review, the antidumping duty cash deposit rate for Saha Thai will be adjusted by the portion of the countervailing duty cash deposit rate established in that review that is attributable to export subsidies.

We disagree with Saha Thai that our instructions to the U.S. Customs Service regarding the proper assessment of antidumping duties and the collection of cash deposits in instances where there is a concurrent countervailing duty review is an improper delegation of authority and prevents interested parties from participating fully in the process. The Department's instructions to the Customs Service are nothing more than direction for the application of rates established in antidumping and countervailing duty proceedings in which Saha Thai was given the opportunity to fully participate. Our specific instructions to the U.S. Customs Service regarding the collection and assessment of duties reflect the decisions made by the Department pursuant to its statutory and regulatory authority and thus cannot be construed as an improper delegation of the Department's authority.

Comment 21: Saha Thai contends that the Department should not have deducted inland freight expenses from the home market price it compared to COP to determine sales below cost. According to Saha Thai, both its original and supplemental questionnaire responses demonstrate that it included freight expenses in the calculation of the SG&A portion of the COP. Therefore such expenses should remain in the home market price used to determine sales below cost.

Petitioners claim that Saha Thai's questionnaire responses fail to identify any freight expenses included in the calculation of SG&A expenses. Therefore, petitioners contend that the Department should make no adjustments for freight expenses to the home market price used to determine sales below cost.

Department's Position: We agree with Saha Thai. Saha Thai's questionnaire response indicates that freight expenses were included in the reported SG&A expenses used to calculate cost of production. Therefore, for these final results, we have not deducted freight expenses from the home market price used in the test for sales below cost.

Comment 22: Saha Thai suggests that, because the Department used fiscal-year average costs for purposes of the cost test, it should consider also using fiscal-year averages for the purposes of the difmer adjustment rather than quarterly average costs.

Department's Position: We agree with Saha Thai and have used fiscal-year average cost data to adjust for differences in merchandise for these final results.

Comment 23: Saha Thai argues that the Department should apply its test pursuant to section 773(b) of the Tariff Act to determine whether below cost sales were made in substantial quantities on an aggregate rather than a model-specific basis. Although Saha Thai notes several cases where the Department administered the cost test on an aggregate basis, Saha Thai acknowledges that in recent cases the Department has changed its practice and administered the cost test on a model-specific basis. Saha Thai argues that there are several problems with the Department's change in policy.

First, Saha Thai argues that the Department failed to apply its new policy consistently in every case that followed the Department's use of a model-specific cost test in *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 55 FR 26255 (June 27, 1990).

Second, Saha Thai argues that the test is not consistent with the statutory requirement that below-cost sales be ''substantial'' and made ''over an extended period of time'' in order to be disregarded in the determination of FMV. According to Saha Thai, application of the cost test on a model-specific basis can result in disregarding below cost sales of certain models even when the amount of below cost sales of the model in question occurred during only one quarter and is minuscule in

relation to all such or similar merchandise sold during the POR.

Third, Saha Thai argues that the Department has failed to explain adequately its deviation from prior practice or why the model-specific cost test better implements the statutory mandate. According to Saha Thai, the fact that the Department's price-to-price comparisons focus on model matches is irrelevant. Saha Thai argues that because all home market sales are used to determine FMV, application of the cost test to all such sales on an aggregate basis would satisfy the requirement that the test be focused on sales used in determining FMV. According to Saha Thai, in this case nearly all models sold in the home market could be compared to all models sold in the United States. Accordingly, Saha Thai argues that it would be more appropriate to conduct the cost test on an aggregate basis since potential price-to-price comparisons are not limited to sales of specific models but rather extend to the entire group of such or similar merchandise.

Petitioners argue that a December 1992 Policy Bulletin issued by the Department recognized that its varied approach to administering the cost test created an inconsistent and unpredictable practice. According to petitioners, the Department determined in its Policy Bulletin that application of the test on a model specific-basis was the better approach to implementing the statute. Petitioners claim that any subsequent final results that failed to conform to the policy bulletin were incorrectly issued.

Department's Position: We disagree with Saha Thai's position that the cost test should be administered on an aggregate rather than model-specific basis. As stated in our *Policy Bulletin* dated December 15, 1992, Section 773(b) of the Tariff Act directs us to disregard below-cost sales in calculating FMV. Because FMV is model-specific, employing a model-specific methodology is the most appropriate approach to determine if sales below cost were made in substantial quantities. *See, Sweaters Wholly or in Chief Weight of Man-Made Fiber From Korea; Final Results of Antidumping Duty Administrative Review*, 59 FR 17513 (April 13, 1994). If we were to adopt Saha Thai's position and administer the cost test on an aggregate level, we would risk comparing U.S. sales to model-specific FMVs where all sales of the model are below cost as long as total home market sales below cost remained under 10 percent. The statute did not intend to allow for such comparisons. For these reasons, we have rejected using an aggregate cost test and have continued to test individual models for sales below cost for these final results.

Comment 24: Saha Thai argues that the Department's regulations (19 CFR 353.60), require that the official exchange rates certified by the Federal Reserve Bank be used in the Department's antidumping calculations. Saha Thai argues that the exchange rates used in the preliminary determination do not conform to the quarterly exchange rates published by the Federal Reserve Bank. Saha Thai requests that the Department use the Federal reserve Bank's quarterly exchange rates for the final results of review.

Department's Position: Contrary to Saha Thai's assertion, we did use the quarterly exchange rates, certified by the Federal Reserve Bank, and supplied to us by the U.S. Customs Service for the preliminary results. Therefore, we will continue to use the same rates for these final results.

Final Results of Review

Based on our analysis of the comments received, we determine that a margin of 18.04 percent exists for Saha Thai for the period March 1, 1992, through February 28, 1993.

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

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of pipe and tube from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for Saha Thai will be 18.04 percent; (2) for previously investigated companies not named above, the cash deposit 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, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all others'' rate established in the final notice of the less-than-fair-value (LTFV) investigation of this case, in accordance with the CIT's decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) and *Federal Mogul Corporation and Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993). The all others rate is 15.67 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 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 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1993).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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[A–580–008]

Color Television Receivers From Korea; Initiation of Anticircumvention Inquiry on Antidumping Duty Order

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

ACTION: Notice of Initiation of Anticircumvention Inquiry.

SUMMARY: On the basis of an application filed with the Department of Commerce (the Department) on August 11, 1995, we are initiating an anticircumvention inquiry to determine whether imports of color television receivers (CTVs) from Mexico and Thailand are circumventing the antidumping duty order on color television receivers from the Republic of Korea (49 FR 18336, April 30, 1984).