	Period
Israel: Oil Country Tubular Goods (C–508–601)	01/01/95–12/31/95
Netherlands: Standard Chrysanthemums (C–421–601)	01/01/95–12/31/95
Pakistan: Cotton Shop Towels (C–535–001)	01/01/95–12/31/95
Turkey: Certain Welded Carbon Steel Pipe and Tube (C–489–502)	01/01/95–12/31/95
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	01/01/95–12/31/95
United Kingdom: Hot-Rolled Lead and Bismuth CSP (C–412–811)	01/01/95–12/31/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends or the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by March 31, 1996. If the Department does not receive, by March 31, 1996, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: February 28, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4982 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–047]

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

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

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

SUMMARY: On July 24, 1995, the Department of Commerce (the Department) published the preliminary results of its 1991–92 administrative review of the antidumping finding on elemental sulphur from Canada (60 FR 7872). The review covers 15 manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1991 through November 30, 1992 (the POR). We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made changes, including corrections of certain clerical errors, in the margin calculation for Husky Oil Ltd. (Husky). These changes have resulted in a change in the best information available (BIA) rates assigned to Mobil Oil Canada, Ltd. and Petrosul International (Petrosul) for this review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for each of the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–0410 or –4733, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1995, the Department published in the Federal Register the preliminary results of review (60 FR 6872) of the period December 1, 1991 through November 30, 1992. Pennzoil, a domestic producer, and two exporters, Husky and Mobil, requested a public hearing which was held on September 27, 1995. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

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.

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.

Verification

As provided in section 776(b) of the Tariff Act, we conducted sales and cost verifications of Husky and Mobil and verified information provided by these respondents by using standard verification procedures, including on-site inspection of the producer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs and rebuttal briefs from Pennzoil, Husky, Mobil, and Petrosul.

Comment 1

Pennzoil agrees with the Department's decision to base Husky's foreign market value (FMV) on constructed value (CV). Pennzoil maintains, however, that the Department understated Husky's CV by failing to include in the calculations the direct operating and general facilities expenses relating to the sulphur block storage area. Additionally, Pennzoil argues that the Department failed to include in the sulphur cost of manufacture (COM) a portion of the property, plant and equipment (PP&E) writedown attributable to the sections of its processing plants after the split-off point for sulphur production.

Husky argues that it was proper to exclude the direct operating and general facilities expenses it incurred for the sulphur block storage lease. Husky maintains that these expenses relate to natural gas processing and, therefore are not a sulphur handling cost.

Department's Position

We agree with Pennzoil that inclusion of the direct operating and general facility costs related to sulphur block storage in CV is appropriate. As explained in the decision memorandum, *Memorandum To Susan G. Esserman From Joseph A. Spetrini: Team Recommendation Related to the Cost Accounting Treatment of Elemental Sulphur from Canada,* June 29, 1995, all costs incurred after the liquid sulphur exits the sulphur recovery unit relate to the production of sulphur. At this point in the production process, Husky has the choice of either selling the liquid sulphur, forming it for overseas sale, or pouring it to block for long-term storage. All of these choices relate to selling sulphur, either currently or in the future. Accordingly, we consider it appropriate to include, as part of the cost of producing sulphur, all costs incurred in the sulphur block storage lease.

We disagree with Pennzoil, however, that a portion of Husky's writedown of PP&E should be included in the COM for sulphur. These writedowns relate to certain properties in which the carrying value on Husky's books exceeds the estimated future cash value of mineral reserves. Since such costs are associated entirely with exploration and development of mineral reserves, we consider this type of writedown to be a cost incurred prior to the sulphur production split-off point. As such, we consider these costs to be part of Husky's natural gas operations. We have, therefore, excluded Husky's PP&E writedown from our calculated sulphur costs (*see* related byproduct/coproduct issue at Comments 2 and 3).

Comment 2

Pennzoil claims that the Department erred in finding that sulphur produced by Husky is not a coproduct. Pennzoil contends that, in accordance with Generally Accepted Cost Accounting Principles (GACAP), a joint product is deemed to be a coproduct if the value of its production during a certain period of time is significant in relation to the other products generated from the same production process during the same time period (relative value analysis). Pennzoil maintains that, in accordance with GACAP and the Treasury Department's position in *Elemental Sulphur from Canada: Antidumping; Tentative Determination to Modify or Revoke Dumping Finding,* 44 FR 8057, 8058 (February 8, 1979), the standard for significant value is whether the value of production for the joint product exceeds ten percent of the total joint product revenues. Pennzoil argues that the value of Husky's sulphur production during the POR exceeds the threshold for classifying it as a coproduct.

Pennzoil also argues that the Department erred in its preliminary results by determining relative value on a company-wide basis rather than on a plant-specific basis. According to Pennzoil, the value of sulphur production at each of Husky's sour gas processing plants is clearly significant in relation to the value of all other products generated from the same process during the POR. Pennzoil claims that it is Departmental practice to follow GACAP, and that GACAP requires that the relative value analysis be applied only to products that are in fact jointly produced in the same manufacturing process. Pennzoil avers that it is illogical to combine revenues from both sour and sweet gas processing facilities in determining relative value since sweet gas operations have different production processes, a different cost structure, and do not produce sulphur. Furthermore, Pennzoil notes that investments in sour gas facilities are made with the expectation of sulphur revenues, whereas such is not the case with sweet facilities. Accordingly, Pennzoil concludes, sweet gas revenues should not play a role in determining the cost of production (COP) for sulphur. However, even if the Department determines that relative value must be determined on a company-wide basis, Pennzoil maintains that the value of sulphur production during the POR still exceeds the threshold for classifying Husky's sulphur as a coproduct.

In addition to relative sales value considerations, Pennzoil notes several qualitative factors which it claims further support its position that sulphur is a coproduct of natural gas production. First, Pennzoil notes that Husky's normal accounting system does not separately identify the costs of producing individual products. Second, Pennzoil notes that very significant additional processing of hydrogen sulfide (H_2S) occurs after the split-off point. Third, Pennzoil contends that Husky intentionally produces sulphur, as illustrated by its investment in a highly sour gas field and its purchase of liquid sulphur for the manufacture of formed sulphur. According to Pennzoil, all of these factors lead to the conclusion that sulphur must be treated as a coproduct of natural gas production, and that a portion of Husky's joint production costs must therefore be allocated to sulphur based on the volume of H_2S in the raw gas stream.

Husky argues that the record is replete with evidence to support the Department's preliminary results to treat sulphur as a byproduct of natural gas production. Husky maintains that it normally accounts for sulphur as a byproduct and, thus, assigns no inventory value to sulphur production in the ordinary course of its business. Husky notes that this practice is in accordance with its home country Generally Accepted Accounting Principles (GAAP). Husky also argues that GACAP is not a recognized set of authoritative accounting principles. Husky states that the production of sulphur is an unavoidable consequence of natural gas production from sour gas wells and, thus, will occur regardless of any action the company takes. Husky maintains that the only reason it produces sulphur is to fulfill its obligation under Canadian environmental laws to remove H_2S from the unrefined natural gas stream and convert it into elemental sulphur.

Moreover, Husky claims that Pennzoil's assertion that Husky invested in certain sour gas fields with the intention of producing sulphur is misplaced. Husky claims that while it may have hoped to earn supplemental sulphur income from its investment in sour gas fields, sulphur amounts to little more than a liability to Husky.

Husky argues that its revenue from sulphur production during the POR is insignificant compared to that of the other products produced during the same time period. Husky maintains that, in analyzing relative value, the Department has never held to a bright-line test. In fact, Husky notes that there have been numerous recent antidumping decisions involving byproduct/coproduct issues, and in none of these instances did the Department impose a ten-percent bright-line standard as part of its relative value analysis. Husky claims that Pennzoil's reference to the 1979 tentative Treasury Department decision in support of a ten-percent threshold has never been accepted by the Department and is, therefore, unpersuasive. Husky also notes that Pennzoil's proposed adjustments to relative value analysis performed in the preliminary results are without merit.

Additionally, Husky contends that the relative value analysis must be performed on a company-wide basis for two reasons. First, Husky asserts, not all sulphur processed at a certain facility is associated with sour gas from that same facility. However, Husky argues, when sulphur is sold from the processing facility, the revenues are recorded on the books of the processing facility rather than on the books of the refining facility. Second, Husky claims that it makes all decisions regarding its treatment of sulphur on a company-wide basis. Husky notes that, although each facility maintains lease statistics regarding production and sales quantities for all products and for all producers, corporate sales personnel rather than the individual facility operators make sulphur sales decisions.

Department's Position

In calculating the costs of producing subject merchandise, the Department's practice is to adhere to an individual firm's recording of costs in accordance with GAAP of its home country if the Department is satisfied that such principles reasonably reflect the costs of producing the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple From Thailand,* 60 FR 29553, 29559–62 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22556 (May 8, 1995) (''The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise''). The Department's practice has been sustained by the CIT. *See, e.g., Laclede Steel Co. v. United States,* Slip Op. 94–160 at 21–25 (CIT October 12, 1994) (CIT upheld the Department's decision to reject the respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP).

Normal accounting practices provide an objective standard by which to measure costs, while allowing a respondent a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21952 (May 26, 1992) (Department adjusted a company's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); *Pineapple,* 60 FR at 29560 (Department adjusted a company's allocation of fruit costs because the company's normal accounting methodology resulted in an unreasonable allocation of such costs between canned pineapple fruit and juice products).

In the instant proceeding, therefore, the Department examined whether Husky's accounting treatment of sulphur was reasonable. In examining Husky's books and records at verification we found that Husky had treated sulphur as a byproduct for at least a number of years. Furthermore, we found no evidence that Husky had not relied historically upon its byproduct treatment of sulphur to compute its production costs. In addition, evidence on the record, *i.e.*, audited financial statements, indicates that Husky's byproduct methodology was accepted by its independent auditors. Given the auditors' acceptance of the respondent's financial statements and any lack of evidence to the contrary, we conclude that Husky's normal accounting treatment of sulphur is consistent with Canadian GAAP.

Notwithstanding the Department's conclusion that Husky's treatment of sulphur as a byproduct is in accordance with Canadian GAAP, the Department's byproduct/coproduct analysis includes a number of additional factors. (As discussed in comment 3 below, the Department accepted Husky's assignment of no sulphur processing plant costs to sulphur production. However, the Department did not accept Husky's normal accounting treatment of sulphur handling facility costs because such treatment did not reasonably reflect the costs associated with production of sulphur.)

The Department's practice, in accordance with GAAP, is to recognize a particular joint product as either a coproduct or byproduct based, in part, on the significance of that product relative to the other joint product[s] and to the producing company as a whole. *See e.g.,* Preliminary Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China, 59 FR 565, 568–69 (January 5, 1994); *Cost Accounting: A Managerial Emphasis,* Charles Horngren, George Foster, Seventh Edition, Prentice Hall, Englewood Cliffs, N.J., 1991 at 539–44 (*Horngren*). In this case, we have determined that sulphur is a relatively insignificant byproduct of Husky's natural gas operations. As a result of our relative value analysis and our analysis of other relevant factors, discussed below, we have accepted Husky's treatment of sulphur as a byproduct and have assigned to the subject merchandise only those costs that Husky incurred on the product after it left the sulphur recovery unit. (See our response to related Comment 3 below regarding sulphur production costs.)

In past cases involving coproducts and byproducts, the Department has looked to several factors in order to measure the significance of particular joint products (*see, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22550 (May 8, 1995) (*Furfuryl Alcohol*) and *Concurrence Memorandum: Final Determination: Antidumping Duty Investigation of Furfuryl Alcohol from South Africa,* May 1, 1995 (*Furfuryl Memo*) (*See Memo To File From Case Analyst,* December 13, 1995 (making *Furfuryl Memo* part of record of this proceeding); *Final Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China,* 59 FR 28056 (May 31, 1994) (*Sebacic Acid*)). Among these factors were the following: 1) the relative sales value of the product compared to that of all other joint products produced during the same time period, 2) whether the product is an unavoidable consequence of producing another product, 3) whether management intentionally controls production of the product, 4) whether the product requires significant further processing after the split-off point, and 5) how the company has historically accounted for the product. No single factor is dispositive in our determination. Rather, we must consider each factor in light of all of the facts and circumstances surrounding the case. In this case, we considered each of the preceding factors in reaching our decision to treat sulphur as a byproduct of the natural gas production process.

For the first factor, relative sales value, we compared the sales value of sulphur produced during the POR to that of all other joint products respondent produced during the same time period. From this analysis, we determined that the value of sulphur Husky produced represented a relatively insignificant portion of the total revenues generated by Husky's joint production process for refining natural gas.

In making this determination, we analyzed joint product revenues on a company-wide basis for the natural gas production process rather than on a plant-by-plant basis as Pennzoil requested. Pennzoil argued that, since natural gas from sour gas fields must undergo additional processing to remove the sulphur content, the cost structure of sour gas production facilities differs from that of the sweet gas facilities and, thus, should be subjected to a separate relative sales value analysis. While it may be possible, and even reasonable in certain circumstances, to perform a joint product analysis on a plant-by-plant basis, it certainly is not mandated by law, by general accounting practices, or by any other authority. In a case involving joint products, the Department considers the significance of individual joint products resulting from a common production process. (*See Sebacic Acid*). In this case, Husky's common production process is the production of natural gas, a process which yields sulphur. This reality is not changed by the fact that certain of Husky's gas fields (*i.e.*, sweet fields) did not yield levels of H_2S necessitating the conversion of H_2S to sulphur; overall, due to the nature of Husky's natural gas operations, sulphur is an inevitable consequence of that natural gas production process. Husky's primary business objective is the exploration, refinement, and sale of natural gas (and oil). Relative to Husky's natural gas production and revenue, sulphur production and revenue resulting from that natural gas production was not significant during the period under review. Given these considerations, we believe that Husky's sulphur production should be evaluated within the context of its overall natural gas operations.

Furthermore, Husky makes decisions regarding the treatment of sulphur, particularly the accounting treatment of sulphur, on a company-wide basis. In addition, sulphur sales decisions are made by corporate sales personnel and not by the individual facility operators. Given the relationship of sulphur to natural gas production by Husky, Husky's corporate-wide decision-making practices, and the fact that such practices are consistent with Canadian and U.S. GAAP, we believe that it is appropriate to perform our relative sales value analysis on a company-wide basis for the natural gas process.

Lastly with regard to relative sales value, we disagree with Pennzoil's contention that the Department has established a ten-percent threshold in determining the significance of revenues generated by joint products. Pennzoil's reference to the Treasury Department's 1979 tentative determination as the standard in this case does not reflect recent Department decisions involving coproduct/byproduct determinations. As explained above, the Department considers the relative revenues generated by joint products in conjunction with other important factors in order to determine the significance of the joint product in question. *See, e.g., Furfuryl Alcohol* and *Furfuryl Memo,* where the Department based its determination of the coproduct/byproduct issue on the same five factors noted above. Because the relative value analysis must be viewed within the context of other factors, as well as within the specific circumstances of the case, it would be inappropriate for the Department to establish Pennzoil's suggested ''bright-line'' threshold under which the entire coproduct/byproduct analysis would rest solely on whether revenues from the joint product exceeded ten percent of total revenues for all joint products. Pennzoil's minor proposed adjustments to our relative value calculations, therefore, would not effect our analysis of the relative sales value factor, nor our overall analysis.

Concerning the second factor, whether sulphur is an unavoidable consequence of producing natural gas, we believe that Husky's natural gas production determines the amount of sulphur that the company produces. In order to produce natural gas, Husky must remove poisonous H_2S from the unrefined gas stream and convert it to elemental sulphur in accordance with strict environmental laws. Because Husky has no control over the amount of H_2S in the gas stream and, therefore, the production of sulphur, Husky further processed and sold only part of the sulphur resulting from the treatment of H_2S during the POR. Without limiting the production of refined natural gas, Husky did not have the option of limiting sulphur production, and, therefore, poured the remaining portion of sulphur production to block as a means of long-term storage. It is clear that when producing natural gas, Husky has no choice but to produce elemental sulphur from H_2S, if for no other reason than it must do so to meet environmental standards. Sulphur, therefore, is an unavoidable consequence of natural gas production.

In the case of the third factor, whether management intentionally controls production of the product, while we cannot overlook the fact that Husky derives a portion of its revenues from sulphur, we do not find this to be evidence that the company's management intends to produce sulphur. Rather, as noted above, sulphur production is a requirement, resulting from Husky's decision to produce natural gas. The fact remains that, at significantly high levels, sulphur becomes an impediment to cost-effective natural gas production. In these instances, the high sulphur content in natural gas may force producers to abandon their plans to produce either product.

We disagree with Pennzoil's comment that Husky's investment in highly sour gas fields and its purchase of liquid sulphur during the POR indicate an intent on the part of the company's management to produce sulphur. Pennzoil's point concerning Husky's gas field investment is purely speculative. As to Husky's purchase of liquid sulphur from another supplier, the reason Husky purchases liquid sulphur is explained at page 9 of its proprietary January 9, 1994 cost submission to the Department, and this explanation does not support Pennzoil's position.

For the fourth factor, whether the product requires significant further processing after the split-off point, we found that the H_2S resulting from natural gas refining did undergo significant additional processing after the split-off point in order to transform it into marketable sulphur. As further explained in our response to Comment 3 below, however, we consider much of the additional processing to be associated with natural gas production in that it relates to the removal and treatment of the poisonous H_2S gas which, due to environmental laws, Husky must break down into its primary elements of sulphur and water. As a result, any further processing generally is necessitated by factors not within the company's control.

Finally, with regard to the last factor, how the company has historically accounted for the product, the Department verified that Husky did not assign any of its production costs to sulphur during the POR. Instead, as discussed above, under its normal accounting system, Husky charged all sulphur processing and handling costs to its natural gas operations. Husky's accounting treatment of assigning no costs to sulphur was in accordance with Canadian GAAP and sanctioned by its auditors as demonstrated by the fact that the company's 1991 and 1992 financial statements did not report inventory balances for the sulphur that Husky produced in those years. Notably, for accounting purposes, U.S. producers of natural gas also consider sulphur to be a byproduct.

Contrary to Pennzoil's assertions, we are unaware of the existence of GACAP as a unified body of cost accounting principles that mandates our treating sulphur as a coproduct in this case. We believe that the method Husky used to account for its sulphur production was consistent both with the company's home market GAAP and with its view of sulphur as a byproduct of its natural gas operations. Based on our analysis of the above factors as they relate to the facts in this case, we have determined that the sulphur Husky produced during the POR was a byproduct of its natural gas production operations.

Comment 3

Pennzoil argues that, even if the Department decides to treat sulphur as a natural gas byproduct, it violated the antidumping statute in its preliminary results of review by accounting only for the processing costs Husky incurred subsequent to the sulphur recovery unit. Pennzoil states that section 773(e) of the Tariff Act expressly requires that the cost of fabrication or other processing of any kind be included in CV. Pennzoil maintains that sulphur recovery costs are, in fact, processing costs related to sulphur production that must be included in the Department's CV calculation in accordance with the statute. Pennzoil further argues that, by excluding sulphur recovery costs from its CV calculation, the Department also violated congressional intent as manifested in the sales-below-cost provision of the statute. Pennzoil claims that one of the reasons that Congress enacted the sales-below-cost provision was to afford protection to the U.S. sulphur industry.

According to Pennzoil, the Department's accounting treatment of sulphur production costs is in opposition to what it calls ''GACAP''. Pennzoil maintains that GACAP represents a common and accepted body of cost accounting principles that, among other things, provides guidance concerning the appropriate method for assigning costs to byproducts. According to Pennzoil, in accounting for joint products under GACAP, costs incurred after the production split-off point are separately identifiable and must therefore be charged directly to the specific products produced. In keeping with this principle, Pennzoil contends that, having correctly determined the split-off point in the natural gas production process as occurring prior to the sulphur recovery unit, the Department was compelled under GACAP to account for all of Husky's sulphur recovery costs as part of the cost of processing sulphur. Pennzoil argues that, if the Department continues to treat sulphur as a byproduct, it cannot assign to natural gas production all of the costs associated with Husky's sulphur recovery unit.

Pennzoil notes that, in calculating production costs, the Department relies on respondent's normal cost accounting methodologies so long as those methodologies are in accordance with the company's home market GAAP and reasonably reflect the costs associated with producing the subject merchandise. Pennzoil claims, however, that it cannot find from the record where Husky assigns production costs to either natural gas or sulphur under its normal accounting system. Thus, according to Pennzoil, the Department's assignment of all processing costs (including sulphur recovery unit costs) to natural gas production while charging none to sulphur contravenes Husky's normal accounting practices. Moreover, Pennzoil notes that, even if Husky's accounting method assigns zero production costs to sulphur production, this treatment is distortive because it fails to assign to sulphur the actual costs of producing the sulphur. Thus, Pennzoil contends, the Department should not follow Husky's cost accounting method because it would not reasonably reflect the costs of producing the subject merchandise.

Pennzoil also maintains that Department precedent requires that byproducts absorb all separately identifiable costs incurred after the split-off point in production. In support of this argument, Pennzoil cites *Silicomanganese from Venezuela: Notice of Final Determination of Sales at Less Than Fair Value,* 59 FR 55436 (November 7, 1994), where the Department assigned to merchandise it deemed a byproduct all of the separable further processing costs incurred by the respondent. Pennzoil maintains that the facts in this case are similar to those in the *Silicomanganese from Venezuela* and, thus, there is no reason for the Department to exclude sulphur recovery costs from its sulphur cost calculations if it chooses to treat the subject merchandise as a byproduct.

Pennzoil states that the U.S. Department of Interior (DOI) has prescribed rules for assigning costs to sulphur which mandate that sulphur production be assigned all costs incurred after separation from natural gas. Pennzoil notes that the DOI rules relate to the calculation of royalty payments affecting the joint production of natural gas and sulphur on federal land, and argues that it would be erroneous and contrary to law for the Department to depart from these rules by treating sulphur recovery costs as part of natural gas production costs.

Husky maintains that, contrary to Pennzoil's assertion, Section 773(c) of the Tariff Act does not mandate specific cost allocation methodologies and that the Department's preliminary CV calculations were fully in accordance with its statutory mandate. Husky contends that the Department properly defined the split-off point for purposes of the preliminary results of review, but that H_2S is not a separately identifiable product until after it has been converted into elemental sulphur. According to Husky, the process of converting H_2S into sulphur, a function of the sulphur recovery unit, is a gas cost and is identifiable solely with the process of preparing gas for market. Therefore, Husky contends that the Department should continue to treat all costs up to and including the sulphur recovery unit as related to gas production operations.

Department's Position

We disagree with Pennzoil that the costs Husky incurred in its sulphur recovery unit should be allocated to sulphur production. Rather, we have determined that these costs are associated with Husky's gas production operations. Whether or not Congress enacted the sales-below-cost provision to afford protection to the U.S. sulphur industry, as Pennzoil claims, the statute nowhere specifies how specific processing costs should be allocated among products.

Normally, we consider the split-off point in a joint production process to be where the products become physically separable. We normally assign these post-split-off costs to each separately identifiable product because this is the point where a company has a choice of whether to further process each separable product or to dispose of it. This case is unique, however, in that even though the physical split-off point is prior to the sulphur recovery unit, Husky does not have the option of disposing of all H_2S. As explained below, in order to refine natural gas, Husky must incur costs in the sulphur recovery unit.

As part of the natural gas production process, H_2S is separated from the unrefined gas stream in the gas processing plant. H_2S output from the gas processing plant enters the sulphur recovery unit where it breaks down into its primary components of sulphur and water. H_2S is a poisonous, corrosive compound for which there is no market and, by Canadian law, it cannot be released into the atmosphere. In order to refine natural gas, Husky has no choice under Canadian environmental regulations but to incur H_2S processing costs in its sulphur recovery unit. To operate or use a natural gas plant and process natural gas, Canadian law requires companies to have certain licenses. These licenses dictate, among other things, certain minimum standards for the reclamation of sulphur contained in the gas delivered to a plant, and the types and quantities of effluent permissible from a plant. Furthermore, agreements with natural gas pipe-line operators specify that no more than a maximum amount of contaminants, including H_2S, be contained in gas introduced into a pipe-line. In addition, there is no dispute as to the extremely poisonous nature of H_2S, a compelling reason to stabilize this element into sulphur and water. Finally, it is undisputed that there is a positive direct correlation between the processing of sour natural gas and the production of H_2S. As saleable natural gas is produced from a sour gas stream and moved into the pipeline, so too must the movement of H_2S proceed within permissible means; otherwise the gas plant must cease operations. Therefore, it is of limited concern to Husky to analyze whether sales revenue it receives for sulphur sales is able to offset costs it incurs in the sulphur recovery unit and handling facility because it must by law dispose of the H_2S in a harmless manner. Rather, only where the costs of the sulphur recovery unit and handling facility impair the profits of refined natural gas might an analysis of sulphur sales revenue vis-a-vis the costs incurred in the sulphur recovery unit and handling facility be of greater consideration. In that case, it is likely that overall production for a particular gas field would cease if the costs associated with the removal and sale of sulphur caused the natural gas line of business to operate at a loss.

Contrary to Pennzoil's claim that Husky assigns no production costs to natural gas under its normal accounting system, we noted during verification that Husky assigns all gas and sulphur processing costs to production of natural gas (see the Department's position to Comment 2).

We disagree with Pennzoil's categorization of GACAP as the accounting rules which dictate our accounting treatment for COP and CV cases. Neither the accounting profession nor the Department recognizes GACAP as an authoritative source. This is a creation of Pennzoil, which selectively chose different cost accounting concepts from over 15 different texts dating back to 1920. While we recognize certain cost accounting concepts, we do not advocate one acceptable concept over another for all cases. Rather, we consider the facts surrounding each case. Cost accounting texts are fairly general in nature, with their purpose being to illustrate the various acceptable methods for allocating costs in certain situations. One of the key points cost accounting texts try to emphasize is that in most instances there is no *single,* right answer *see e.g. Horngren.* The way a company ultimately allocates costs to the various product lines depends on numerous factors unique to that company, including the products it manufactures, its corporate structure, and the way in which its management uses its accounting data. Id.

We disagree with Pennzoil that the facts of this case require that we allocate costs of the sulphur recovery unit. In *Silicomanganese from Venezuela,* the slag which resulted from the production of Grade B silicomanganese did not require further processing and it could have been disposed of in its current state, unlike the H_2S which results from the production of natural gas. The respondent company, however, chose to process it into Grade C product rather than to dispose of it. In this case, Husky does not have this option, but must process the dangerous H_2S in order to break it down into a stable and safe form (*i.e.,* sulphur and water) in accordance with Canadian law.

Finally, there is no connection between the DOI's proposed rules and our statute and regulations. Accordingly, we consider it irrelevant how DOI proposes to calculate royalty payments for sulphur produced on federal land.

In conclusion, we have allocated only costs incurred subsequent to the sulphur recovery unit to sulphur production. We believe these costs reasonably reflect the costs associated with the production of sulphur.

Comment 4

Husky maintains that, in accordance with past precedents, the Department should allow the company to offset its sulphur processing costs with revenues it earned from processing other companies' sulphur. Husky claims that, as a matter of law, costs for antidumping purposes can be offset by income so long as that income is directly related to the production of the product under review.

In support of its position, Husky cites two cases in which the Department offset costs for miscellaneous income, and several cases in which the Department allowed an offset to production costs for the sale of byproducts and scrap which resulted from the production of the subject merchandise. Husky cites *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Administrative Review,* 55 FR 21061, 21063 (May 22, 1990) (*Cooking Ware*), and *Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less Than Fair Value,* 52 FR 8324, 8329 (March 17, 1987) (*Orange Juice*) to support its position.

Pennzoil contends that the Department was correct in not allowing Husky to deduct processing fees from its sulphur COM. According to Pennzoil, the processing fees do not result from Husky's normal operations but, rather, relate to the company's acting as a subcontractor on behalf of other sulphur producers. Pennzoil claims that it is unaware of any situation in which the Department has allowed respondents to offset their production costs for fee income generated from another line of business.

Department's Position

We disagree with Husky's contention that the sulphur processing revenues it received represent a reduction in the company's sulphur production costs. During the POR, in addition to processing its own sulphur, Husky processed large quantities of sulphur belonging to other companies. These companies paid Husky processing fees based on the quantity of sulphur that Husky processed for them. In computing its sulphur costs, Husky offset the total cost of all sulphur it produced during the POR by an amount representing the gross earnings from the sulphur which it processed for the other companies. Husky then calculated a per-unit sulphur cost by dividing the remaining balance of production costs, net of gross processing revenues, by the quantity of sulphur that the company had produced for its own account. The effect of this methodology was to reduce Husky's own sulphur production costs by the amount of profits that the company earned from processing sulphur that belonged to the other companies.

Contrary to Husky's assertions, we find that the revenues it received from processing sulphur for other companies do not relate directly to the production costs it incurred in producing the subject merchandise on its own account. Instead, these fees represent income Husky earned from a separate line of business as a subcontractor offering sulphur processing services. Husky provided these services to its customers for a fee which represented the processing costs Husky incurred, plus a mark-up for profit. However, the net profits that Husky earned from processing sulphur as part of its separate subcontractor operations did not reduce the costs that it incurred to process and sell its own sulphur.

We disagree with Husky that, by disallowing its processing revenue offset, we are deviating from our position in past cases. In neither of the cases cited by Husky, *Cooking Ware* and *Orange Juice,* did we allow respondents to reduce the production costs of subject merchandise by profit earned from another line of business. Rather, consistent with our normal practice, we allowed offsets to the cost of producing the subject merchandise for revenues earned on the sale of byproducts and scrap which resulted from the production of the subject merchandise. This practice is distinguishable from Husky's situation in that the revenues Husky earned on its subcontracting operations do not directly relate to Husky's production of the subject merchandise. Rather, they relate to its subcontracting operations which is a separate line of business. Therefore, we have not offset Husky's sulphur COP and CV by revenues it earned on its subcontracting operations.

Comment 5

Husky argues that the Department should allocate depreciation expense to the sulphur handling facility on a net realizable value (NRV) basis. Husky maintains that an NRV allocation basis is reasonable since, in its normal accounting system, it allocates no expenses to sulphur. Husky further maintains that it is within the Department's discretion to use a value-based allocation methodology. In support of its position, Husky cites *Pineapple* as a recent determination in which the Department relied on a value-based cost allocation methodology. Husky argues that, using a cost-based allocation methodology, as the Department did for purposes of the preliminary results of this review, overstates the depreciation expense allocated to sulphur production. Husky also claims that it is inconsistent for the Department to determine, as it did in the preliminary results of review, that sulphur is a byproduct based on its relative sales value while, at the same time, rejecting an allocation of depreciation expense that similarly relies on relative sales values.

Husky further contends that, regardless of how the Department decides to allocate depreciation expense to sulphur, it must adjust for the fact that an unrelated company pays Husky a capital charge which, in effect, reimburses Husky for a portion of its depreciation expense incurred for the use of its facility. Husky maintains that, in the preliminary results of review, the Department erroneously computed per-unit depreciation expense for sulphur by including this capital charge in total depreciation costs, but failed to include this company's related quantity of sulphur production. According to Husky, the Department should correct this error either by reducing Husky's depreciation expense for the year by the capital charge payment, or by allocating total depreciation expense over the total quantity of sulphur Husky produced, regardless of ownership.

Pennzoil argues that the Department correctly allocated depreciation expense based on the direct operating costs Husky incurred in each functional leasehold area. According to Pennzoil, the Department prefers to allocate indirect costs using a cost-based allocation methodology rather than one based on net sales revenue. Additionally, Pennzoil notes that Husky recognized this fact when it allocated the cost of its general facilities and other expenses to each lease based on the direct costs incurred for each lease. Pennzoil maintains that depreciation expense incurred in connection with each lease is more closely related to the lease's operating expenses than to the NRV of the products produced at the facility. Additionally, Pennzoil contends that Husky's cite to *Pineapple* as support for a sales-based allocation is misplaced. Pennzoil notes that, in that case, the Department determined that it was appropriate to rely on the value-based allocation method because the respondent had used this method for a number of years in its normal accounting system. Pennzoil notes that, in the instant case, Husky created its NRV allocation methodology solely for the purpose of this review.

Pennzoil also contends that, consistent with its finding in the preliminary results, just as the Department should not reduce Husky's per-unit sulphur COP by the profit earned on processing a certain other company's sulphur, neither should the Department adjust Husky's depreciation expense to account for the capital charge received from the other company.

Department's Position

We disagree with Husky that it is appropriate to allocate depreciation expense among its products based on a relative sales values methodology. Although Husky claims that it does not maintain a fixed asset ledger that records depreciation expense for each of its leases, this does not mean that the company's depreciation expense represents an actual joint production cost that, under certain circumstances, may be appropriately allocated on the basis of relative sales value. On the contrary, in this instance, the depreciation expense for fixed assets that Husky used to produce sulphur, natural gas, and other products bears no direct relationship to the sales value generated from those products. Therefore, allocation on the basis of sales value could lead to cost distortions and would not be appropriate.

The Department typically has found that respondents maintain sufficiently detailed fixed asset records that allow them to account for depreciation expense on a product-specific basis. In this case, however, because Husky's records do not permit the company to trace depreciation expense in such a manner, we believe that it is appropriate to treat these costs like other indirect costs, such as manufacturing overhead or general and administrative expenses. The Department generally favors a cost-based allocation methodology for indirect costs. For example, the Department has consistently required that respondents allocate general and administrative expenses on the basis of cost of sales rather than on relative sales revenue or other inappropriate bases. *See, e.g., Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan, Final Results of Antidumping Administrative Review,* 56 FR 41508, 41516, August 21, 1991). As Pennzoil has pointed out, Husky itself adopted such a cost-based methodology in allocating its indirect general facilities costs on the basis of the direct costs it incurred at each lease. Thus, the cost-based methodology the Department used to re-allocate Husky's depreciation expense for the preliminary results was both consistent with past Department practice and with Husky's own method of allocating the other indirect costs the company incurred during the POR.

Husky is incorrect in referring to the Department's determination in *Pineapple* as support for its value-based allocation of depreciation expense. As noted above, in the instant case, the need to treat depreciation expense as an indirect cost (and thereby allocate the amount incurred among the various products produced by Husky) arises from limitations in the company's own accounting system. Since Husky's accounting system does not distinguish fixed assets used to produce sulphur after the split off point in production, some method must be used to allocate the otherwise fully separable costs associated with fixed assets to produce sulphur. In *Pineapple*, however, the Department dealt with the issue of allocating genuine joint production costs that were otherwise inseparable up to the production split-off point where the process yielded distinct products.

Pineapple also differs from the instant case in the fact that the pineapple growers had, for many years prior to the antidumping investigation, accounted for joint processing costs on the basis of relative sales value. As noted previously, however, Husky's value-based methodology is not part of its normal accounting system and was devised by the company specifically for the purpose of allocating depreciation costs in this review.

We disagree with Husky's claim that use of the relative sales value in our sulphur byproduct analysis is inconsistent with our rejection of it as the basis for allocating depreciation expense among the company's products. As discussed in our response to Comment 2, relative sales value is but one of several factors that we considered in measuring the significance of sulphur as part of our coproduct/byproduct analysis. It is not a dispositive factor, especially in situations in which the relative sales values of subject and non-subject merchandise are measured only during periods covered by an antidumping investigation or administrative review. Contrary to Husky's assertions, the fact that the Department considers sales value as one of several factors in its coproduct/byproduct analysis for the subject merchandise does not, as a consequence, make the price charged for that merchandise a reliable basis upon which to allocate depreciation expenses or other such normally separable costs. Accordingly, the Department has allocated depreciation expense using a cost-based methodology, consistent with its treatment in the preliminary results.

Lastly, we agree with Husky that it is appropriate to include a certain company's sulphur production quantity in the calculation of per-unit depreciation expense. Therefore, we have accounted for all quantities processed at the facility, regardless of whether the product was owned by Husky, in establishing the per-unit depreciation costs.

Comment 6

Pennzoil asserts that, with regard to selling, general and administrative (SG&A) expenses included in CV, the Department properly included Husky's third-country royalty expenses, but neglected to include PRISM Sulphur Corporation's (PRISM's) SG&A expenses incurred on Husky's behalf. Pennzoil cites the Department's Dumping Manual at p. 53 and *Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts From the Federal Republic of Germany*, 52 FR 28170 (July 28, 1987), to support its position.

Husky asserts that the Department properly excluded PRISM's general expenses from CV and that the Department correctly limited general expenses to those Husky incurred, since only Husky's general expenses are included in the third-country sales prices it reported. Husky asserts that the third-country prices the Department used in its analysis were not the prices PRISM charged to its unrelated customers but rather were the ''netback'' revenue Husky received from PRISM, which represents Husky's net return, exclusive of the expenses (including general expenses) PRISM incurred in selling the sulphur to third countries. Husky asserts that exceeding the 20-percent difference-in-merchandise threshold (DIFMER) is the only reason the Department did not use the reported prices (netback revenues) and, since these prices were the verified arm's-length prices from Husky to PRISM, the Department appropriately limited the general expenses included in the CV calculation to the general expenses in that price. Therefore, Husky contends that the Department should dismiss Pennzoil's argument and base the final results on the reported and verified expenses Husky incurred.

Department's Position

We agree with Pennzoil and have attributed a portion of PRISM's selling expenses to Husky for CV purposes. Section 773(e) of the Tariff Act specifies that general expenses be equal to that usually reflected in sales of merchandise of the same general class or kind but not less than 10 percent of COM. Because PRISM, essentially a sales organization, incurred expenses of the kind usually reflected in sales of merchandise of the same general class or kind on Husky's behalf, we have allocated PRISM's operating expenses to Husky, and, therefore, to the calculation of CV in our determination of Husky's dumping margin.

Comment 7

Pennzoil asserts that the Department's margin calculation for Husky contains an error in that the Department calculated Husky's weighted-average margin by dividing total duties due by the gross sales value of U.S. sales instead of dividing the total duties due by the net U.S. sales value.

Department's Position

We agree and have recalculated Husky's weighted-average dumping margin by dividing total duties due by the net U.S. sales value, consistent with our normal practice.

Comment 8

Husky asserts that the Department made two ministerial errors in its calculation of Husky's margin and requests the Department to correct these errors. Husky indicates that the Department double-counted U.S. packing costs for bagged and powdered sulphur and that the royalty expense the Department included as a direct selling expense component of general expenses was not equivalent to the royalty expense the Department subtracted as a circumstance-of-sale adjustment as required by statute and Department practice.

Department's Position

We agree and have corrected the errors in these final results.

Comment 9

Pennzoil asserts that the Department erred in determining that the rate it calculated for Husky should be applied to Mobil as BIA, because Petrosul's margin would be more adverse and must be applied to Mobil as BIA.

Mobil asserts that, if the Department calculates a margin for Petrosul based on Pennzoil's cost allegation or on Husky's CV as Pennzoil proposes, under no circumstances should the Department apply this rate to Mobil. Mobil asserts that the Department's preference is to use verified information as the basis of BIA for a cooperative respondent and cites *In the Matter of Replacement Parts for Self-Propelled Bituminous Paving Equipment from*

Canada, USA–90–1904–01 at 81 (May 15, 1992), concerning the Department's selection of BIA, *Smith Corona* v. *United States*, 796 F. Supp. 1532, 1536–37 (CIT 1992), and other cases for the proposition that the court favors a verified BIA rate over an unverified BIA rate, and favors BIA based on ''reasonably accurate'' information of record if verified data is not available (*Associacion Colombiana de Exportadores de Flores*, 717 F. Supp. 834 (CIT 1989); *Alberta Pork Producers' Marketing Board* v. *United States*, 669 F. Supp. 445 (CIT 1987)). Mobil asserts that, because it cooperated in this review, the Department based its BIA margin on Husky's verified information and that it would be unreasonable to penalize Mobil by using unverified information that results in an artificially high dumping margin.

Mobil asserts that there is no support for Pennzoil's approach because 1) the Department did not verify the price information Petrosul submitted, 2) the CV information in Pennzoil's cost allegation was not only not verified, but was based on a coproduct methodology, and 3) the Department thoroughly and successfully verified Mobil's cost responses and determined Mobil produces sulphur as a byproduct.

Department's Position

In our preliminary results, we determined that, because Mobil substantially cooperated in this segment of the proceeding by responding to our requests for information and participating in verification, application of second-tier BIA for Mobil was appropriate. The second-tier approach results in the application of the higher of (1) the highest 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, if the firm has never before been investigated or reviewed, the ''all others'' rate from the LTFV investigation; 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 (*see, e.g., Allied-Signal Aerospace Co.* v. *United States*, 966 F.2d 1185, 1191 (Fed. Cir. 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Antidumping Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10908 (February 28, 1995)). 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. Pennzoil has not presented an argument which persuades the Department to deviate from application of its established BIA policy with regard to Mobil. With regard to the Department's treatment of Petrosul, see Comment 13.

Comment 10

Pennzoil asserts that the Department erred in concluding that 5.66 [sic] percent was the highest rate previously assigned to Mobil, as the Department's first administrative review found a margin for Mobil of 12.9 percent, and, although unpublished, Mobil's entries were liquidated at that rate. Pennzoil cites *Elemental Sulphur from Canada: Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part*, 49 FR 45789, 45790 (September 15, 1981), and provides copies of telexes to Customs and an attachment to a letter to a respondent with proposed assessment rates to support its position. Accordingly, Pennzoil asserts, if the revised BIA rate the Department calculates for Petrosul is the highest calculated rate in this review, the Department should apply that rate to Mobil, but under no circumstances should Mobil receive a rate lower than 12.9 percent.

Mobil asserts that its highest previous rate is 5.56 percent, and disputes Pennzoil's assertion that its highest previous rate is 12.9 percent. Mobil claims that although the Department's September 15, 1981 preliminary results indicate a 12.9-percent rate for the period July 1, 1978 through December 31, 1978 and a 75.19-percent rate for the period January 1, 1979 through November 30, 1980, there was a correction to the November 28, 1986 instructions on which Pennzoil relies in its arguments. Mobil explains that the Department issued instructions stating that entries for the January 1979 through November 1981 should not be liquidated. Mobil points to the Department's 1987 final results for the period January 1, 1979 through November 30, 1981, which established a rate of zero for Mobil (52 FR 41601). Mobil concludes that there are no published final results or Customs instructions that would support Pennzoil's claimed rate of 12.9 percent for the period July 1, 1978 through December 31, 1978. Concerning the October 6, 1986 telex identified by Pennzoil relating to Mobil's entries for 1982–83 at 12.9 percent, Mobil asserts that it was obviously based on the same error underlying the November 28, 1986 instruction.

Department's Position

We agree with Mobil. The Department's practice is to rely on the published final results of a review or investigation to determine the highest rate ever applicable to a firm. We never published final results of review with a rate of 12.9 percent, for any period, for Mobil's sales. The highest published final review rate the Department has been able to ascertain for Mobil is 5.56 percent.

However, because the rate calculated in this review for Husky is higher than 5.56 percent, that rate shall apply to Mobil's transactions as second-tier BIA in this review.

Comment 11

Mobil believes a 1978 U.S. Customs ruling issued to Mobil Chemical (Mochem) (predecessor of Mobil Mining and Minerals (MMM), a U.S. affiliate of Mobil), holding that sulphur purchased by Mochem for internal use was exempt from antidumping duties, is still applicable. Mobil asserts that the reason for the exemption was that, although the sulphur is used in the manufacture of diammonium phosphate fertilizer (DAP), the end-product, DAP, contains no sulphur as it ends up in the form of gypsum, a waste product. Thus, Mobil contends that there is no sale to an unrelated customer of sulphur or of the product containing sulphur from which U.S. price could be derived. Mobil asserts that Mobil, Mochem, and MMM have relied on this ruling and Customs has never assessed antidumping duties on sulphur imported by MoChem and MMM for use in the manufacture of DAP.

Mobil further asserts that it has an arrangement with MMM and a certain unrelated U.S. entity whereby Mobil sells sulphur to its U.S. affiliate, MMM, which then ''swaps'' this sulphur with the unrelated U.S. entity, such that Mobil sulphur is delivered to this unrelated U.S. entity in return for the delivery of sulphur from this unrelated U.S. entity to MMM.

Mobil asserts that MMM does not resell the sulphur, but discards it as a waste product in the form of gypsum. As there is no arm's-length price, Mobil contends that the Customs Service ruling applies. Mobil requests that the Department issue liquidation instructions which direct Customs not to assess duties on any imports of Mobil sulphur by a certain unrelated U.S. entity which that entity purchased pursuant to the swap arrangement.

Pennzoil asserts that the Department may not exempt imports of Mobil sulphur by this unrelated U.S. entity from the assessment of antidumping duties. Pennzoil argues that the 1978 Customs ruling does not apply to the sulphur the unrelated entity acquired in its swap transactions.

Pennzoil asserts that the limited exemption in the 1978 Customs ruling was based on a repealed statute and Treasury Department regulation and that the ruling applies only to sulphur MMM used to produce DAP at a plant which closed in 1987. Pennzoil further asserts that, because Mobil has not disclosed the purpose for which the entity used the sulphur, the Department cannot determine that the ruling applies to Mobil's sulphur, given that Customs granted the exemption under the provision that the sulphur was consumed in the production of DAP. Pennzoil contends that the unrelated U.S. entity may have imported the Mobil sulphur for resale to U.S. customers and there is no evidence on the record of this review that the entity ever produced DAP, let alone consumed the Mobil sulphur in the course of producing that product. Pennzoil notes that, contrary to the statement in the Customs ruling, gypsum is a salable product.

Pennzoil asserts that, given the Department's application of total BIA to Mobil, the Department should not rely on Mobil's factual assertions and reward it by excluding U.S. sales from coverage by the finding.

Finally, Pennzoil asserts that Mobil's request constitutes an improper request for a scope determination and that such an exclusion would create significant administrative burdens for Customs and the Department. Pennzoil contends that any liquidation instructions would need to contain certain restrictions in view of the fact that the 1978 ruling expressly does not cover a percentage of sulphur imported by Mobil's related entity that do not go to the Depue Plant, or that go to Depue but are used in the production of sulfuric acid.

Department's Position

The 1978 Treasury ruling does not apply to these transactions since the ruling is narrowly drafted to apply only to shipments of Mobil sulphur to a Mobil affiliate used for a specific purpose. Moreover, the specific language of the Treasury ruling does not address ''swap'' transactions.

After discussing the basis for the exclusion, the ruling concludes: ''Sulphur imported by Mobil Chemical from its Canadian affiliate, Mobil Oil Canada, and used in the production of diammonium phosphate fertilizer (DAP) will be appraised by U.S. Customs without regard to the Antidumping Act, 1921, as amended. That portion of the Canadian elemental sulphur imported by Mobil Chemical from Mobil Oil Canada and not shipped to the Depue plant or that used in the production of sulfuric acid will be appraised for antidumping duties.'' *Letter to Patrick F.J. Macrory, Esq. from Salvatore E. Caramagno, Director, Classification and Value Division, Department of the Treasury, U.S. Customs Service*, January 10, 1978.

The ruling does not apply to Mobil's Canadian sulphur actually consumed by an unrelated U.S. entity, regardless of the use to which MMM ultimately put the exchanged or ''swapped'' sulphur (ostensibly, this is U.S.-produced sulphur, obtained from the unrelated U.S. entity). It is the U.S.-produced product that is ''discarded as a waste product in the form of gypsum'' (*Mobil Brief*, August 28, 1995 at 5), and not Mobil's Canadian sulphur.

In any event, even if the ruling applied to these transactions, the Department agrees with Pennzoil that any exemption of this sulphur would be improper in the context of the application of total BIA to Mobil, given the serious doubts concerning the reliability and completeness of its submissions. While Mobil segregated the volumes of sulphur that were subject to these swap transactions in its sales listings, as exhibited by *Verification of Sales Questionnaire Response of Mobil Oil Canada Ltd.*, November 22, 1994 (*Verification Report*), and explained in *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)) (*Memo*), the Department concluded that problems it encountered at Mobil's sales verification rendered ''Mobil's entire sales response seriously defective and an inappropriate basis on which to conduct a dumping analysis.'' *Memo* at 4. The Department further concluded, among other things, that, ''given the magnitude and scope of the other problems encountered at verification of Mobil, the Department has serious doubts concerning the overall reliability and completeness of Mobil's submission. Therefore, we do not believe that Mobil's responses constitute a proper basis on which to base a calculated margin.'' *Memo* at 4–5.

For purposes of these final results, we believe that a problem exists in addition to our inability to conduct a proper dumping analysis. This problem concerns the proper segregation of the swap transactions by Mobil in its sales response, since not all transactions with this unrelated U.S. entity during the POR were the subject of these swaps. Given the overall unreliability of Mobil's sales submissions to the Department, and for the additional reason above, the Department will not exempt from the assessment of antidumping duties any of the Canadian sulphur delivered to this unrelated U.S. entity during the POR.

Comment 12

Mobil states that it recognizes that the Department applied total BIA to its transactions because of difficulties during its sales verification, but offers comments concerning its reported costs that were successfully verified in the event the Department decides to use its costs.

Pennzoil asserts that the Department cannot use the cost data provided by Mobil and urges the Department to reject Mobil's suggestion for a number of reasons. First, Pennzoil comments that Mobil failed the sales verification and the Department's use of total BIA is consistent with the statute, Department precedent and decisions of the CIT. Citing *Empresa Nacional Siderurgica, S.A. and the Government of Spain v. United States*, Ct. No. 93–09–00630–AD, Slip Op. 95–33 at 9 (CIT March 6, 1995), and *Rhone-Poulenc, Inc. v. United States*, 710 F. Supp. 341, 346 (CIT, 1990), Pennzoil asserts that where a company fails verification so that the Department cannot rely on its U.S. selling prices, it has no choice but to resort to total BIA because U.S. prices are an absolutely essential element of the calculation of a dumping margin. Second, Pennzoil argues that the Department cannot rely on Mobil's cost information as the basis for FMV because Mobil failed to report production costs for its sulphur-producing facilities in the manner and detail which the Department's questionnaire requires. Pennzoil asserts that Mobil failed to separately identify the costs associated with sulphur handling and without this information the Department cannot compute the CV of sulphur under either a coproduct or byproduct cost accounting methodology. Third, Pennzoil contends that Mobil's cost data are useless as a basis for determining CV because the Department could not verify the barrel-of-oil equivalent method Mobil used. In addition, Pennzoil asserts that this method is totally inappropriate for identifying sulphur production costs, since the market value of sulphur derives from its value in fertilizer, not its thermal heat. Further, Pennzoil argues, the relative BOE figures bear no relationship to those products' volume or value and Mobil failed to provide any basis for its BOE-per-MT conversion factor. Pennzoil notes the Department's cost verification report wherein the Department stated the BOE methodology ''might not be an appropriate basis for the allocation of joint costs.'' Finally, citing the Department's BIA memorandum for Mobil wherein the Department states it has ''serious doubts concerning the overall reliability and completeness of Mobil's submissions,'' Pennzoil asserts that the Department determined that it could not rely on any of Mobil's responses to calculate a dumping margin.

Department's Position

We affirm our decision in the preliminary results to assign Mobil total BIA for this review based on problems we encountered at verification of its sales responses. Given those problems, we do not believe that Mobil's responses constitute a proper basis on which to base a calculated margin. *See Memo at 4–5.* Mobil's costs would be of use only if there were reliable, verified sales information, which there is not. The issue of the appropriateness or validity of Mobil's reported costs is, therefore, moot.

Comment 13

Pennzoil asserts that the Department properly resorted to BIA for Petrosul but did not select the correct BIA rate to apply to Petrosul's sales. Pennzoil asserts that, in applying Husky's calculated margin to Petrosul, the Department rewarded Petrosul and its suppliers for their failure to supply requested COP information. Pennzoil argues that the use of Husky's margin assumes that Petrosul's sulphur is produced as a byproduct, and that, in any event, the record demonstrates that Petrosul's U.S. prices varied from Husky's. Instead, Pennzoil contends that the Department should calculate a margin for Petrosul by comparing its reported U.S. prices to a CV calculated from information in Pennzoil's cost allegation, or compare Petrosul's United States prices (USPs) to a public CV calculated for Husky.

Citing the Department's *Final Results of Antidumping Duty Administrative Reviews; Oil Country Tubular Goods from Canada, 56* FR 38408, 38410 (August 13, 1991) (*OCTG*), Pennzoil asserts that it is the Department's practice to use cost information provided by the petitioners as BIA when the suppliers of an otherwise cooperative exporter fail to provide COP information: this information is then compared to the USPs of the exporter to determine margins. Pennzoil states that in relying on a ''company-specific'' finding for Husky and Mobil that sulphur is a byproduct, the Department concluded that because ''only sulphur handling facility costs should be allocated to sulphur production, the necessary [cost] information is not available from Pennzoil's cost allegation'' to use as BIA for Petrosul's suppliers' cost information. Pennzoil asserts that the Department's assumption that a byproduct cost methodology is appropriate for Petrosul is unsupported by evidence on the record and is contrary to the Department's BIA practice of making adverse assumptions when a party fails to provide requested information. Pennzoil asserts that the Department must assume that Petrosul's sulphur was a coproduct and should, as in OCTG, compare Petrosul's USPs to a CV based on the coproduct information in Pennzoil's cost allegation.

Citing *Shop Towels of Cotton from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 55 FR 7756 (March 5, 1990), Pennzoil further asserts that the Department acted contrary to its practice when it failed to use ''other information'' on the record that indicated a higher margin existed for Petrosul and insists that the Department should have compared Petrosul's USPs to the CV calculated for Husky plus Petrosul's SG&A expense and profit.

Pennzoil claims that the Department failed to compare Petrosul's USP to Husky's CV on the grounds that Department policy prohibits cross-respondent use of proprietary data, but Pennzoil asserts that *Pineapple* and *Silicon Metal from Brazil,* 59 FR 42806 (August 19, 1994), demonstrate that no such policy exists and that, even if such a policy exists, the Department should not apply it in a manner that thwarts its established BIA practice. Pennzoil concludes that, at a minimum, the Department should calculate a margin for Petrosul by comparing its reported USPs to a CV calculated, in part, using Husky's public data and adding Petrosul's SG&A and profit.

Citing *Allied-Signal Aerospace Co.* v. *United States,* 966 F.2d 1185, 1191 (Fed. Cir. 1993), *Krupp Stahl A.G.* v. *United States,* 822 F. Supp. 789, 792 (CIT 1993), and *Chemical Products Corp.* v. *United States,* 645 F. Supp. 289, 295 (CIT 1986), Petrosul asserts that the Department is accorded substantial discretion and deference in determining BIA and claims that, while it may rely on information submitted by petitioner, it is not required to do so. Petrosul asserts that the Department followed its practice of assigning to Petrosul, a cooperative respondent, the highest calculated rate in this review based on the second-tier of its two-tiered methodology. Citing *Citrosuco Paulista, S.A.* v. *United States,* 704 F. Supp. 1075, 1088 (CIT 1988), Petrosul asserts that the Department must either conform itself to prior decisions or explain the reasons for a departure, and that Pennzoil has provided no new arguments or facts that would justify such a departure.

Petrosul asserts that Pennzoil's reliance on *OCTG* is misplaced because in *OCTG* the Department noted that it could have simply used total BIA, but that it was more reasonable to use BIA to calculate only the COP. In addition, Petrosul asserts that because the review covered only one exporter, the Department was prevented from using other respondents' COP information as surrogate information. Petrosul asserts the only alternative open to the Department would have been to use the highest margin previously assigned to the exporter, but because the exporter was cooperative, the Department declined to do so.

In addition, Petrosul disputes Pennzoil's contentions that, first, application of Husky's rate, calculated using a byproduct methodology, results in a less adverse rate for Petrosul and, second, that the Department should have assigned a higher BIA rate to Petrosul based on Petrosul's U.S. pricing data. Citing *Disposable Pocket Lighters from the People's Republic of China; Final Determination of Sales at Less Than Fair Value,* 60 FR 22359, 22360 (May 5, 1995), Petrosul asserts that the Department normally assigns less adverse margins to respondents that cooperate, and citing *Emerson Power Transmission Corporation* v. *United States,* No. 92–07–00480, Slip Op. at 19 (CIT Sept. 1, 1995), Petrosul asserts that once the Department establishes that BIA is appropriate, it has broad discretion in determining what information to use. Citing the preliminary results in this review, Petrosul asserts that the Department may apply either total BIA or select individual pieces of data to substitute for missing or unreliable data. Citing *Shop Towels of Cotton from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 55 FR 7756 (March 5, 1990), Petrosul asserts that, while it may be appropriate to rely on other information as BIA, the Department is not required to rely on more adverse information, particularly where a respondent has been cooperative, and, thus, the Department is not required to assign Petrosul a higher BIA based on information which differs from the information on which it calculated Husky's dumping margin.

Department's Position

We disagree with Pennzoil that we should calculate a margin for Petrosul by comparing its reported USPs to a CV calculated from information in Pennzoil's cost allegation, or compare Petrosul's USPs to a public CV calculated for Husky. We are satisfied that selection of Husky's calculated rate is the appropriate BIA for Petrosul for this review, is consistent with our practice, and effectuates the purpose of the BIA rule.

The Department has broad discretion in determining what constitutes BIA in a given situation (*Krupp Stahl A.G.* v. *United States,* 822 F. Supp. 789, 792 (CIT 1993); *see also Allied-Signal Aerospace Co.* v. *United States, 966 F.2d 1185, 1191 (Fed. Cir. 1993) ''[B]ecause Congress has 'explicitly left a gap for the agency to fill' in determining what constitutes the best information available, the ITA's construction of the statute must be accorded considerable deference.''). The court has upheld the Department's two-tiered BIA methodology as ''a reasonable and permissible exercise of the ITA's statutory authority to use the best information available when a respondent refuses or is unable to provide requested information.'' Allied Signal* at 1192.

We agree with Pennzoil that we are not prohibited from resorting to a petitioner's cost information for BIA when the suppliers of an otherwise cooperative exporter fail to provide COP information. However, we are not compelled to do so. Furthermore, in this case, Pennzoil's cost allegation does not contain the necessary information, as the allegation does not individually identify the costs we have determined to be related to sulphur production and we are not able to ascertain them.

For the preliminary results, the Department concluded that ''[b]ecause the Department has determined that only sulphur handling facility costs should be allocated to sulphur production, the necessary information is not available from Pennzoil's cost allegation. As a result, we do not have the option of utilizing Pennzoil's cost data.'' *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) at 6 (*Petrosul Memo*). While the determination that ''only sulphur handling facility costs should be allocated to sulphur production'' is based on company-specific determinations of the status of sulphur as either a coproduct or byproduct, the Department notes that it made these determinations with regard to two of the three respondents that actively participated in this review. In *OCTG,* noting the wide discretion afforded it in determining what constitutes BIA, the Department determined that it would be more reasonable to use BIA to calculate cost of production for the respondent instead of applying total BIA because the cost information was not in the control of the respondent (*OCTG* at 38411). The Department acknowledges that it could assume that Petrosul's sulphur is a coproduct, but where we have found byproduct status for two of three respondents' sulphur, and where Petrosul has been deemed to be a cooperative respondent (*see Petrosul Memo at 7*), it is reasonable to disregard Pennzoil's cost data reported under a coproduct methodology.

Furthermore, the Department's decisions in *Pineapple* and *Silicon Metal from Brazil* do not stand for the proposition that cross-respondent use of proprietary data is permissible absent consent or adequate safeguards to protect the confidentiality of the data. In *Pineapple* and *Silicon Metal from Brazil,* adequate safeguards to protect the confidentiality of the data were present, *i.e.,* in *Pineapple,* we used proprietary data from several respondents such that no one respondent's proprietary data was vulnerable to disclosure. That is not the case in this review. The Department does not believe that use of Husky's public or ranged proprietary data would protect the confidentiality of the data.

In addition, in *TECHNOIMPORTEXPORT and Peer Bearing Company* v. *United States,* 766 F. Supp. 1169, 1177 (CIT 1991), the court stated that ''the use of confidential data without the communicated consent of the company from which the data is compiled is contrary to law and established ITA policy.''

Finally, the fact that Petrosul's U.S. sales data indicate USPs that differ from Husky's does not alter our decision. The Department must assess all of the facts on the record in making its determination, including the degree of cooperation or noncooperation of a respondent. For these final results, we determine that it is appropriate to apply total cooperative BIA to Petrosul since it is consistent both with our practice and the purpose of the BIA rule.

Comment 14

Petrosul asserts that the Department's COP investigation should focus on Petrosul's cost of acquisition (COA) rather than production costs of its suppliers and that as a matter of law the Department is not entitled to disregard Petrosul's COA in a COP investigation. Petrosul asserts that there is no statutory basis for disregarding Petrosul's COA as Petrosul is not related to its suppliers and, citing section 773(e)(4) of the Tariff Act, asserts that the scope of the Department's authority to disregard transaction values is limited expressly to transactions between related parties. Therefore, in determining FMV through CV, Petrosul contends that the Department may not look beyond the cost of acquiring materials to the supplier's COP where the transactions are between parties that are not related as defined by the Tariff Act.

Citing *Consolidated International Automotive, Inc.* v. *United States,* 809 F. Supp. 125 (CIT 1992), and *Washington Red Raspberry Comm. v. United States,* 657 F. Supp. 537 (CIT 1987), Petrosul asserts that the court rejected the argument that a CV analysis should look beyond transfer prices of inputs to the COP of such inputs incurred by unrelated suppliers, and explicitly reversed the Department's refusal to accept transaction prices in COP investigations of resellers where the transactions were unrelated. Petrosul asserts that it is unrelated to its suppliers, and, unlike the exporters in *Red Raspberry,* it is a truly independent reseller. Petrosul contends that the total absence of any relationship precludes the Department from pursuing an investigation based on the COP of Petrosul's suppliers.

Pennzoil asserts that, while section 773(b) of the Tariff Act does not define the ''cost of production'', by its terms it requires actual production costs, not a purchaser's cost of acquiring the finished product, to be compared to home market prices, and that Department regulations expressly state that COP will be based on ''the cost of materials, fabrication, and general expenses, but excluding profit.'' Pennzoil asserts that Petrosul's argument for basing COP on acquisition cost does not address the language of section 773(b) of the Tariff Act, Department precedent, the Department's explanation for its use of BIA in the preliminary results, or the Department memorandum on these matters. Instead, Pennzoil argues, Petrosul's cites to statutory language and cases dealing with the valuation of inputs used in producing subject merchandise in determining CV which, according to Pennzoil, is irrelevant since Petrosul, a reseller, did not manufacture sulphur from any inputs.

Pennzoil rebuts Petrosul's reference to section 773(e)(4) of the Tariff Act, and argues that it defines ''related parties'' for the purposes of sections 773(e) (2) and (3), and that these sections address valuation of inputs in determining CV. Pennzoil asserts that section 773(e)(1) requires that CV include all inputs in the production of subject merchandise and that, since Petrosul did not purchase liquid sulphur as a material input in the production of that same subject merchandise, Pennzoil contends that these provisions are irrelevant.

Pennzoil further asserts that *Consolidated Automotive* and *Red Raspberry* involve valuation of inputs in calculating CV, the first which upheld the Department's use of the transaction price of lug nut blanks (an input) in determining the CV of chrome-plated lug nuts (subject merchandise), and the latter which found unlawful the Department's failure to use the transaction price of red raspberries (an input) in determining the CV of fresh and frozen red raspberries packed in bulk containers and suitable for further processing (the subject merchandise). Pennzoil asserts that, contrary to Petrosul's assertion, the exporters in *Red Raspberry* were not resellers, but rather manufacturers.

Pennzoil concludes that the CIT has not reviewed the Department's practice of rejecting acquisition cost as a basis for the COP of merchandise sold by a reseller, but that, given the substantial discretion afforded the Department, its interpretation of section 773(b) is proper because using acquisition cost would be contrary to the plain language of the sales-below-cost provision and would defeat its purpose.

Department's Position

The record indicates that Petrosul purchases elemental sulphur after its conversion from H_2S and without further processing. Petrosul admits it is not a producer of elemental sulphur, but rather merely a reseller. Because Petrosul is not involved in the production of elemental sulphur, the issue of the proper valuation of inputs is not relevant. Therefore, the statutory provisions and cases cited by Petrosul are not relevant.

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 and 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. Upon receiving a satisfactory allegation of sales below cost, the Department is required to investigate those allegations. This investigation is mandated by section 773(b) of the Tariff Act, which provides that:

> Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the *cost of producing the merchandise* in question, it shall determine whether, in fact, such sales were made at less than the *cost of producing the merchandise.* . . .

Section 773(b) of the Act (1994) (emphasis added).

As stated above, consistent with the Department's policy on this matter with regard to resellers, the Department has interpreted ''cost of producing the merchandise'' to mean the production costs of the producer, plus the producer's SG&A, plus the SG&A of the reseller. *See Memorandum from David Mueller to Reviewers,* December 18, 1990, attached to *Petrosul Memo; see, also, Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 (February 25, 1991); *Oil Country Tubular Goods (OCTG) from Canada,* 56 FR 38406 (August 13, 1991); and *Fresh Kiwifruit from New Zealand,* 57 FR 13695 (April 17, 1992). *See also Petrosul Memo.* While this interpretation may create a burden upon a respondent such as Petrosul, to hold otherwise would allow a huge loophole and open domestic producers to competition with below cost exports without remedy because the producer could continue to sell his production below cost, and, as long as he does not know the destination, the intermediate prices would be taken as COP for resellers, regardless of the actual costs incurred. Because the Department was unable to obtain the costs of producing the elemental sulphur supplied to Petrosul, the Department was unable to proceed to the next step in a sales-below-cost-investigation: comparison of the sulphur COP to Petrosul's home-market prices. Therefore, the Department relied on BIA.

Comment 15

Petrosul asserts that the use of its COA is particularly appropriate in the case of a waste product like elemental sulphur and claims that the substance actually recovered from natural gas or oil is hydrogen sulphide gas, which is not ''merchandise'' within the COP language of section 773(b) of the Tariff Act (19 U.S.C. § 1677b(b)). Therefore, Petrosul contends that the cost of extracting hydrogen sulphide and converting it into elemental sulphur is not a ''cost of producing the merchandise'' but is a cost mandated by both commerce and law of disposal of hydrogen-sulphide, a byproduct or waste product.

Petrosul asserts that production of recovered elemental sulphur is involuntary, that it is purchased immediately after its conversion from hydrogen sulphide without further processing, and, therefore, the ''cost of producing the merchandise'' is properly limited to acquisition, handling, administrative and sales costs incurred by Petrosul. Petrosul asserts that its COA is the most accurate measure of the product's COP since that is the first time value is attributed to the product.

Department's Position

Petrosul obtains elemental sulphur for resale and not H_2S. Therefore, we need the COP of sulphur for our analysis. In addition, the Department has determined that it must ascribe some costs to the production of sulphur, even if it considers sulphur a byproduct (*see, e.g., Comment 3; see also* Memorandum to Susan G. Esserman from Joseph A. Spetrini; Team Recommendation Related to The Cost Accounting Treatment of Elemental Sulphur From Canada, June 29, 1995). It is clear that Petrosul's suppliers bear some of these costs in handling elemental sulphur after converting it from H_2S as the Department determined that costs incurred in the sulphur handling facility, including loading, transferring of the product and a portion of general facilities costs relate directly to the sale of sulphur (*Id.* at 6). Because the Department does not have these costs, it was unable to proceed with its cost investigation of Petrosul.

Comment 16

Petrosul asserts that the Department acknowledged that Petrosul cooperated fully in this review, and that it provided all information requested except for its suppliers' COPs, which it does not have and cannot force its suppliers to provide. Under such circumstances, Petrosul contends that reliance on BIA is arbitrary, capricious, an abuse of discretion and contrary to law as there is nothing that Petrosul could do.

Petrosul asserts that even in antidumping proceedings, parties are entitled to due process protection, citing *Sugiyama Chain Co., Ltd.* v. *United*

States, 852 F. Supp. 1103, 1115 (CIT 1994) (*Sugiyama*), yet the Department's approach here condemns all independent resellers to BIA margins in COP investigations where the unrelated supplier chooses not to cooperate. Petrosul contends that it is a violation of due process of law for the Department to assign BIA margins to respondents that cannot produce information which is not, and will never be, in their possession.

Petrosul asserts that it never had an opportunity to respond to the Department's request for its suppliers' costs, information which is beyond Petrosul's reach, and that Petrosul is being denied the opportunity to respond. Petrosul cites *Sigma Corp.* v. *United States,* 841 F. Supp. 1255 (CIT 1993), where the court reversed the Department's reliance on BIA for a respondent that never was given an opportunity to respond, to support its position.

Pennzoil asserts that basing Petrosul's margin of dumping on BIA is not fundamentally unfair, an abuse of discretion or a denial of due process. Pennzoil argues that there is no alternative to reliance on BIA for Petrosul in the absence of actual COP data, as use of acquisition cost would subvert the sales-below-cost provision of the Tariff Act.

Department's Position

The Department believes Petrosul has been fully afforded procedural due process. The Department requested cost information from Petrosul's suppliers, all of whom refused to provide such information. 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.'' Further, 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). 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.

With regard to Petrosul's assertion that it never had an opportunity to respond to the Department's request for its suppliers's costs, given the Department's practice, Petrosul was fully aware of the import of its suppliers' refusal to reply to the Department's questionnaire.

Final Results of Review

We determine the following percentage weighted-average margins exist for the period December 1, 1991 through November 30, 1992:

Manufacturer/exporter	Percent margin
Husky Oil Ltd.	7.17
Mobil Oil Canada, Ltd.	[1] 7.17
Petrosul	[1] 7.17
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. As a result, the firm will be subject to the ''all others'' rate.

[3] Non-cooperative BIA rate.

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. The Department will issue appraisement instructions on each exporter directly to the 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 these final results, as provided by section 751)a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed companies will be the rates listed 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 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, we have determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of administrative review we published (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 we published. 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 we conducted 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 shall remain in effect until publication of the final results of the next administrative review.

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 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 orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). 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 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.

Dated: February 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4979 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–601]

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

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

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from Farberware, Inc. (petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. This notice of preliminary results covers the period January 1, 1994 through December 31, 1994. This review covers one manufacturer/exporter, Daelim Trading Company, Ltd. (Daelim). The review indicates the existence of dumping margins during this period.

We have preliminarily determined that sales have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202)482–5253.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations of the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA).

Background

The Department published an antidumping duty order on certain stainless steel cooking ware from the Republic of Korea on January 20, 1987 (52 FR 2139). The Department published a notice of ''Opportunity To Request an Administrative Review'' of the antidumping duty order for the 1994 review period on January 12, 1995 (60 FR 2941). On January 30, 1995, petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea for one manufacturer/exporter, covering the period January 1, 1994 through December 31, 1994. We initiated the review on February 15, 1995 (60 FR 8629).

The Department extended the time limits for the deadlines for the preliminary and final results of review because of the additional time required for the development of a new questionnaire that accorded with the URAA. See *Antidumping Duty Administrative Reviews; Time Limits*, 60 FR 56141 (November 7, 1995). As a result of the federal government 28-day total shutdown, these deadlines were further extended.

The Department is now conducting this administrative review in accordance with section 751 of the Act.

In addition, on September 11, 1995, petitioner requested that the Department conduct an investigation to determine if Daelim made sales at prices below its cost of production (COP) during the review period. On October 19, 1995, based on petitioner's allegation and the totality of evidence on record, the Department determined that there were reasonable grounds to believe or suspect that Daelim made sales at prices below its COP, in accordance with section 773 (b)(2)(A)(i) of the Act, and initiated a COP investigation for Daelim, pursuant to section 773(b)(1) of the Act. See *Certain Stainless Steel Cooking Ware from Korea—Home Market Sales Below Cost Allegation for Daelim Trading Company, Ltd.*, October 19, 1995.

Scope of the Review

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

The period of review (POR) is January 1, 1994 through December 31, 1994, covering one manufacturer/exporter, Daelim.

Use of Facts Available

A large portion of Daelim's home market sales were to an affiliated reseller. Because an extremely small percentage of Daelim's total home market sales were to unaffiliated customers, there is not a sufficient factual basis to determine whether sales to the affiliated reseller were made at arm's-length prices. See *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review,* 52 FR 8940, 8943 (March 20, 1987). Therefore, the Department will request that Daelim provide the information on sales by its affiliated reseller to the first unaffiliated customer for certain home market models.

For purposes of the preliminary results, the Department has applied a neutral facts available (FA) rate for the missing downstream sales information, in accordance with section 776(a)(1) of the Act. For a neutral FA rate, we applied the weighted-average margin calculated for sales to the United States (U.S.) for which there were appropriate home market sales for matching