

deposit rate will be 3.85 percent, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996).

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

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the 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: December 24, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-295 Filed 1-6-97; 8:45 am]

BILLING CODE 3510-DS-P

A-122-047

Elemental Sulphur From Canada: 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 requests by respondents, the Department of

Commerce (the Department) is conducting an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers the period December 1, 1994 through November 30, 1995.

As a result of the review, we have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On December 17, 1973, the Department of the Treasury published in the Federal Register (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On December 4, 1995, the Department published in the Federal Register a notice of opportunity to request an administrative review of this antidumping finding for the period December 1, 1994 through November 30, 1995 (60 FR 62070).

On January 11, 1996, Mobil Oil Canada, Ltd. (Mobil) requested an administrative review of its sales. On January 22, 1996, Husky Oil Ltd. (Husky) requested an administrative review of its sales. The review was

initiated on February 1, 1996 (61 FR 3670-71).

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

Scope of the Review

Imports covered by these reviews 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. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

The period of review ("POR") is December 1, 1994 through November 30, 1995, and covers two companies.

Verification

As provided in section 782(i) of the Act, we verified information provided by Mobil, using standard verification procedures, including on-site inspection of the manufacturer's facilities, 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.

Mobil

Facts Available

On May 31, 1996, petitioners alleged that Mobil made home market sales of subject merchandise below cost of production ("COP"). On June 28, 1996, we concluded that petitioners' allegation provided the Department with "reasonable grounds to believe or suspect" that Mobil made below cost sales in the home market within the meaning of section 773(2)(A)(i) of the Act. Therefore, we initiated a COP investigation of Mobil's sales, and directed Mobil to respond to Section D of the Department's February 8, 1996 questionnaire.

Mobil has maintained throughout this review that because sulphur is a "waste product", it does not track sulphur production and handling costs. In its August 5, 1996 cost response, Mobil estimated its cost of manufacture ("COM") based on an engineering estimate of sulphur loading costs at one plant, representing 5% of Mobil's sulphur production. However, Mobil could not prove that this estimate bore any relation to Mobil's actual costs as recorded in Mobil's cost accounting system. Moreover, the estimate only applied to 5% of Mobil's production of

subject merchandise. Therefore, in response to the Department's September 3, 1996 request for supplemental information, Mobil submitted a response on September 25, 1996 based on an entirely different methodology, in which total plant costs (including production of gas, oil, and sulphur) were reported and then allocated to the production of subject merchandise.

In accordance with section 782(i) of the Act, during the week October 21–25, 1996, the Department conducted verification of Mobil's cost responses. At verification, Mobil revealed for the first time that two of its 22 plants maintained sulphur cost centers, including one whose sulphur cost center was active during the POR. The Department verification team then found that sulphur cost centers in fact were maintained during the POR for five of Mobil's plants, accounting for over 50% of Mobil's sulphur production during the POR. In response to the verification team's inquiry, Mobil stated while it was preparing its responses, it had not sought to ascertain whether the producing plants maintained sulphur cost centers. Moreover, the verification team found that the allocation methodology employed by Mobil in its September 25, 1996 response was based on a barrel of oil equivalent ("BOE"), a unit of measurement not used in the normal course of business by Mobil to allocate costs and not relevant to sulphur because sulphur is not burned.

Section 776(a)(2) of the Act provides that if an interested party or other person—(A) withholds information that has been requested by the Department, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(d) provides that if the Department "determines that a response to a request for information . . . does not comply with the request, {the Department} shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide the person with an opportunity to remedy or explain the deficiency in light of the time limits established for completion of investigations or reviews under this title." In accordance with that section, the Department provided Mobil ample opportunity to correct the defects in its submitted cost response. As indicated

above, the deficiency in Mobil's original cost response methodology was brought to Mobil's attention in a supplemental questionnaire. See *Supplemental Cost Questionnaire Concerning the 1994–1995 Administrative Review of the Antidumping Finding on Elemental Sulphur from Canada*, Question 6, September 3, 1996 ("Please report costs for all facilities in which Mobil has an interest and which produce sulphur, and included costs from each facility in your calculations of the cost of production and constructed value. . . . Although you need not provide cost information with respect to any facility accounting for less than five percent of Mobil's total *production volume*, not sales volume, you must account for at least 90 percent of Mobil's total *production volume* in reporting Mobil's costs" {emphasis in original}). In response to the Department's supplemental questionnaire, Mobil developed another methodology, yet continued to claim that it was unable to report costs in the form and manner requested by the Department. Only at verification did the Department discover that Mobil maintained cost centers specific to sulphur in its accounting records for the majority of its reported POR production.

Mobil's failure to provide the Department with the requested cost information constitutes a withholding of information within the meaning of section 776(a)(2)(A) of the Act. We must therefore consider whether the submitted cost data is usable under section 782(e) of the Act.

Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

When examined in light of the requirements of section 782(e), the facts of the case indicate that Mobil's cost data is so fundamentally flawed as to render it unusable. Because the discovery of sulphur cost centers occurred only at verification (and

therefore, would have remained undiscovered were it not for the Department's decision to verify Mobil's response), this information was not provided to the Department by the deadlines established for its submissions, as required by subsection (e)(1).

Additionally, as a consequence of the discovery at verification of these sulphur cost centers, the Department was unable to verify this information, as required by subsection (e)(2). It is a central tenet of Departmental practice that verification is not intended to be an opportunity for submitting new factual information. Further, the Department also stated in its verification outline that new information will be accepted at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. See *Letter to Mobil Oil Canada: Sales and Cost Verification: Administrative Review of the Antidumping Duty Order on Elemental Sulphur from Canada*, page 2 (October 11, 1996). The discovery of sulphur cost centers meets none of these qualifications. As such, the Department could not verify this information during its verification of Mobil.

We also find the information which Mobil supplied in its responses to be so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, as required by subsection (e)(3). First, we have determined that the use of facts available for Mobil's cost data renders its sales data unusable. Because of the flawed nature of the cost data, home market sales cannot be tested to determine whether they were made at prices above production cost. Insofar as the Department only makes price-to-price comparisons (normal value to export price) using those home market sales that are made above cost, the flawed nature of the cost data makes these comparisons impossible.

In the absence of home market sales data, (*i.e.*, when the home market is viable but there are no comparison sales for a particular U.S. sale), the Department would normally resort to the use of constructed value as normal value. However, the constructed value information reported by Mobil is based on the discredited cost data. Therefore, the use of facts available for cost of production data precludes the use of the submitted constructed value information.

The Department's prior practice has been to reject a respondent's submitted information *in toto* when flawed and unreliable cost data renders any price-to-price comparison impossible. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30311 (June 14, 1996). The rationale for this policy is contained in *Notice of Final Determination of Sales at Less than Fair Value: Grain Oriented Electrical Steel From Italy*, 59 FR 33952, 33594 (July 1, 1994), where the respondent failed the cost verification. The Department explained that the rejection of a respondent's questionnaire response *in toto* is appropriate and consistent with past practice in instances where a respondent failed to provide verifiable COP information:

"[I]f the Department were to accept verified sales information when a respondent's cost information (a substantial part of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation."

This situation applies to Mobil, which provided sales information in proper form, but did not provide cost data which could be verified. Although *Electrical Steel from Italy* was a case involving best information available (BIA) under the pre-URAA statute, it is evidence of the Department's practice of regarding verified sales information as unusable when the corresponding cost data is so flawed that price-to-price comparisons are rendered impossible. The Department has reiterated this position in its *Notice of Preliminary Results of Antidumping Administrative Review: Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 51898, 51900 (October 4, 1996), a case under the post-URAA statute.

In addition, we find that Mobil has not demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department in this review. As noted in the verification report, Mobil did not ask any of its plants whether they maintained sulphur-specific cost centers when preparing its responses. See *Cost Verification of Mobil Oil Canada, Ltd. ("Mobil"): Administrative Review of Elemental Sulphur From Canada*, November 18, 1996, pp. 7-8. Thus, we find that section 782(e)(4) of the Act provides a further basis for declining to consider Mobil's information.

Accordingly, we find that there is no reasonable basis for determining normal value for Mobil in this review. As a result, we could not use Mobil's U.S. sales data in determining an antidumping margin, in accordance with section 782. The Department has no choice, therefore, but to resort to a total facts available methodology.

Section 776(b) provides that adverse inferences may be used in selecting from the fact otherwise available if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also SAA at 870.

We have determined that Mobil did not act to the best of its ability to comply with our requests for information. As discussed above, Mobil did not even ask the producing plants whether they maintained sulphur cost centers. Accordingly, as authorized by section 776(b) of the Act, we have applied an adverse inference in selecting Mobil's margin.

Section 776(b) authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or any other information placed on the record. The SAA provides that "[i]n employing adverse inferences, one factor the [Department] will consider is the extent to which a party may benefit from its own lack of cooperation." SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate "secondary information" by reviewing independent sources reasonably at its disposal. The SAA, at 870, makes it clear that "secondary information" includes information from the petition in the less-than-fair-value (LTFV) investigation and information from a previous section 751 review of the subject merchandise. The SAA also provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*

For our total adverse FA margin, we chose to apply the highest calculated margin from any prior administrative review which the Department is able to corroborate, 7.17%. This rate was calculated in the 1991-92 administrative review of this proceeding, the most recently concluded portion of this proceeding.

As the Department noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*;

Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

The Department notes that the above rate, in addition to being calculated, was also used as "second-tier" (cooperative) BIA in the 1991-92 administrative review. Because we have determined that Mobil has not acted to the best of its ability to comply with our requests for information, we also considered the application of 28.9%, which was the "first tier" BIA rate for nine companies (not including Mobil) in the 1991/1992 review of this finding. However, we could not corroborate this rate based on the Department's official records of this proceeding. If this rate is corroborated subsequent to these preliminary results, we will consider its application as total adverse facts available for Mobil for the purposes of the final results of review.

Finally, we will also consider final rates calculated in the 1992/93 and the 1993/94 administrative reviews in determining total adverse facts available for Mobil for the purposes of the final results of this review.

Husky

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

For calculation of the price to the United States, we used EP, in accordance with section 772(a) of the Act, because Husky's subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and use of

CEP methodology was not otherwise warranted. We calculated export price based on f.o.b. plant or delivered prices to unrelated customers. We made adjustments, where applicable, for brokerage and handling, foreign inland freight, and tank car expenses, in accordance with section 772(c) of the Act.

Normal Value

We found that Husky's quantity of sales in its home market of the foreign like product exceeded five percent of its sales to the United States. Therefore, we have determined that Husky's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C)(ii) of the Act. Moreover, there is no evidence on the record indicating a particular market situation in the exporting country that would not permit a proper comparison of home market and U.S. prices. See section 773(a)(1)(C)(iii). Thus, we based NV on the prices at which the foreign like products were first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP sales.

We based NV on home market prices to unaffiliated purchasers (Husky made no sales to affiliated parties). Home market prices were based on ex-factory or delivered prices. We made adjustments, where applicable, for movement expenses in accordance with sections 773(a)(6)(B) of the Act. We also

made adjustments for differences in circumstances of sale ("COS") in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56 by deducting home market direct selling expenses and adding U.S. direct selling expenses. These amounts included imputed credit expenses in the home market and imputed credit expenses in the U.S. market.

On May 31, 1996, petitioners alleged that Husky made home market sales of foreign like product below cost of production ("COP"). On June 28, 1996, we concluded that petitioners' allegation provided the Department with "reasonable grounds to believe or suspect" that Husky made below cost sales in the home market within the meaning of section 773(2)(A)(i) of the Act. Therefore, we initiated a COP investigation of Husky's sales.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition for shipment. In our COP analysis, we used home market sales and COP information provided by Husky in its questionnaire response.

After calculating COP, we tested whether home market sales of the foreign like product were made at prices below COP and, if so, whether they were made within an extended period of time in substantial quantities and at prices which did not permit recovery of

all costs within a reasonable period of time. See section 773(b)(1). Because each individual price was compared against the POR-long weighted average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. We compared the COP for liquid sulphur to the reported home market prices less any applicable movement charges.

Pursuant to section 773(b)(2)(C) of the Act, we concluded that Husky's below cost sales were made in substantial quantities because the volume of these sales represented more than 20 percent of the volume of sales under consideration for the determination of normal value. We also concluded that these below-cost sales were made within an extended period of time (*i.e.*, within the period of review) within the meaning of section 773. See SAA at 832.

In accordance with section 773(b)(2)(D), we concluded that Husky's below-cost sales were not at prices which permit recovery of all costs within a reasonable period of time because the prices for the below-cost sales were below the weighted average per unit cost of production for the period of review.

Based on these tests, we disregarded below-cost sales with respect to Husky.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1994 through November 30, 1995:

Manufacturer/Exporter	Time period	Margin (percent)
Husky Oil Ltd.	12/1/94-11/30/95	10.33
Mobil Oil Canada, Ltd.	12/1/94-11/30/95	7.17

¹ This is a de minimis rate.

² As described above, this total adverse facts available rate is subject to change for the final results of review.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final

results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the

reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit

rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1991-1992 administrative review of this order (see *Elemental Sulphur from Canada: Final Results of Administrative Review*, 61 FR 8239, 8252 (March 4, 1996)). As noted in those final results, the Department determined this rate to be 5.56 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-296 Filed 1-6-97; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-839]

Suspension of Antidumping Duty Investigation: Sodium Azide From Japan

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving sodium azide from Japan. The basis for this action is an agreement between the Department and producers/exporters accounting for substantially all imports of sodium azide from Japan wherein each signatory producer/exporter has agreed either to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value or to cease exports of this merchandise to the United States. **EFFECTIVE DATE:** January 7, 1997.

FOR FURTHER INFORMATION CONTACT:

William H. Crow II or Michelle A. Frederick, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482-0116 or (202) 482-4162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of sodium azide from Japan are being or are likely to be sold in the United States at less than fair value (61 FR 4959 (February 9, 1996)). On March 8, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation No. 731-TA-740). On August 9, 1996, the Department preliminarily determined that sodium azide is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (61 FR 42585, (August 16, 1996)).

The Commerce Department and the Japanese producers of sodium azide initialed a proposed agreement suspending this investigation on November 13, 1996. On that date, we invited interested parties to provide written comments on the agreement. On December 20, 1996, American Azide Corporation, the petitioner, filed comments with the Department.

The Department and the signatory producers/exporters of sodium azide from Japan signed the final suspension agreement on December 26, 1996.

Scope of Investigation

The product covered by this investigation is sodium azide (NaN₃) regardless of use, and whether or not combined with silicon oxide (SiO₂) or any other inert flow assisting agent. The merchandise under investigation is currently classifiable under item 2850.00.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Interested Party Comments

Having analyzed all comments filed by interested parties, we conclude that the Agreement meets the requirements of the statute. The petitioner raised the following concerns:

First, the petitioner emphasized that the agreement, in its opinion, was in the public interest, and stated its reasons for this conclusion. Second, the petitioner

requested that the Department revise the language in the proposed agreement to identify product types by physical characteristics and not by end use, in order to preclude possible future circumvention of the agreement. Third, the petitioner asked the Department to ensure that the language of the agreement reflect the statutory definition of profit for constructed value, whereby the Department would base profit "only on amounts realized in connection with sales in the ordinary course of trade."

As to the first point, the Department agrees that this agreement is in the public interest, as outlined in the December 26, 1996, memorandum from David Mueller, Director of the Office of Policy, to Robert S. LaRussa, Acting Assistant Secretary for Import Administration ("Public Interest Memorandum"). With respect to the second point, the Department has modified the product type language in the final agreement using physical characteristics to define such types. Third, the Department has added citations to the statute in the agreement in order to define profit for constructed value.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(b) of the Act, we have determined that the agreement will either eliminate exports of this merchandise to the United States or eliminate completely sales of this merchandise to the United States at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See December 26, 1996, Public Interest Memorandum. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed December 26, 1996, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective January 7, 1997, the suspension of liquidation of all entries of sodium azide from Japan entered or withdrawn from warehouse, for consumption, as directed in our notice of "Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Sodium Azide from Japan" is hereby terminated. Any cash deposits on entries of sodium azide from Japan pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.