

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-122-047]

Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 7, 1997, the Department of Commerce (the Department) published in preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada (62 FR 969). This review covers two manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1994 through November 30, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, the results presented in the preliminary results of review have changed.

We determine that sales have been made below normal value ("NV") by companies subject to these reviews. Thus, we will instruct U.S. Customs to assess antidumping duties based on the difference between the export price ("EP") and the NV.

EFFECTIVE DATE: July 15, 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 January 7, 1997, the Department published in the **Federal Register** (62

FR 969) the preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada (hereafter referred to as "Preliminary Results"). We gave interested parties an opportunity to comment on our preliminary results. We received written comments on February 10 and February 21, 1997 from Mobil Oil Canada ("Mobil") and Husky Oil Canada ("Husky"), respondents; and from petitioners, Pennzoil and Freeport McRoran.

No antidumping duty absorption request was made by interested parties, therefore for this review we have not made a determination of whether antidumping duties have been absorbed.

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On August 5, 1996, the Department extended the time limits for the preliminary and final results in this case. *See Elemental Sulphur from Canada: Extension of Time Limit for Antidumping Duty Administrative Review* 61 FR 40604 (1996).

We have now completed the administrative review in accordance with section 751 of 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.

Interested Party Comments*Husky*

Comment 1

Petitioners allege that Husky's reported liquid sulphur cost of manufacturing at one plant is understated as a result of Husky's allegedly improper allocation of certain common costs. Petitioners argue that Husky's treatment of these costs essentially is based on what they claim to be the "faulty" premise that these costs are purely indirect costs and that the other three cost centers at the facility (pouring, forming, and remelt) contain the only costs incurred for direct production activity at this facility. The result, according to petitioners, is a distortive allocation because liquid sulphur is handled at the plant in question, sulphur is stored in major

block storage facilities there, and significant costs are associated with these activities.

Furthermore, petitioners point to Husky's reported pouring costs (which cannot be zero in any month, according to petitioners), as an impossible result, given that block storage was performed at this plant throughout the POR. Additionally, petitioners assert that the common costs, as a percentage of total costs at this plant, are such that these common costs cannot be purely indirect costs that may be allocated to other cost centers.

Finally, petitioners allege that Husky's treatment of these common costs departs from the Department's sulphur cost methodology, as found in the preliminary results of the 1992/93 and 1993/94 reviews, by assigning liquid sulphur handling and block storage costs to the process of forming, thereby understating the cost of manufacture (COM) of liquid sulphur.

Husky rebuts petitioners' contention, stating foremost that the facility in question is a forming facility. Therefore, the vast majority of operating (and indirect) costs are related solely to the forming process, even if the Department allocates some costs to the liquid sulphur input for purposes of the antidumping proceeding.

Husky states that the functional unit in question is not a direct operating cost unit, but instead is the unit where general facility and/or indirect costs are booked. Husky maintains that the Department's treatment of these costs in its preliminary results of the 1992/93 and 1993/94 reviews arose from the fact that the Department mistook this functional unit to be a direct cost unit. Husky claims that it has clarified the issue in the current review, and that the Department therefore properly accepted Husky's allocation of these indirect costs for this review.

Further, Husky claims that all direct costs related to liquid sulphur have been allocated. According to Husky, the insignificant percentage of the facility's total costs accounted for by the two functional units considered joint costs by the Department is consistent with the fact that all of the activities at this facility are related to forming.

With regard to petitioners' assertion concerning the feasibility of having zero block storage costs in any month, Husky states that the record shows otherwise for the period of review. Husky explains this by noting that when it forms all of the sulphur collected from its gas production, it does not incur costs for pouring sulphur to block or maintaining the block. Therefore, Husky maintains

that only when it pours to block does it incur such expenses.

Husky also points to the fact that Husky's operating costs for liquid sulphur at the plant in question are virtually identical to its operating costs for liquid sulphur at another plant (about which petitioners have not made the same allegation). Husky asserts that this fact shows that Husky's allocation of costs to the liquid input are thus reflective of the actual operating costs incurred to produce the liquid input at this plant.

Department's Position: In the final results of review for the 1992/93 and 1993/94 periods, the Department agreed with Husky that the "common" costs for this facility should be allocated to all of the direct cost centers at that facility. Moreover, we stated that it is reasonable that this facility's "common" cost center should be treated as general expenses and allocated to the three functional units because the other cost centers are direct and this facility must incur common (indirect) expenses. Therefore, we concluded that it was appropriate to allocate these common costs to all functional units of the facility based on direct costs. See *Final Results of Antidumping Duty Administrative Review: Elemental Sulphur from Canada (1992/93 and 1993/94)* ("1992/93 and 1993/94 Final Results") published concurrently with this notice of final results.

In the current review, in its September 4, 1996 submission to the Department (at page 12), Husky describes the unit in question as a common cost unit which covers three direct functional units—forming, pouring, remelt—for a particular facility. Husky further states that "all costs charged to this common unit are allocable to sulphur production, and were reported in the column 'allocated general expenses.'"

With regard to petitioners' assertion that there cannot be zero pouring costs when block storage was performed throughout the POR, we agree with Husky that record evidence submitted by Husky shows otherwise. Moreover, we do not find it unreasonable to accept the fact that, when all sulphur collected from gas production is formed, Husky incurs no costs at this facility for pouring sulphur to block or maintaining the block.

Based on the Department's determinations in the two prior reviews regarding the treatment of costs in this cost center, and information on the record of this review, we determine that Husky properly allocated these common (and indirect) costs in calculating cost of manufacture for liquid sulphur.

Comment 2

Petitioners argue that Husky misallocated the complex-wide costs incurred for production of all joint products at one facility. Because common cost centers are part of the complex, some portion of complex-wide costs, such as certain administrative and communications expenses, necessarily are attributable to activities that occur in the common cost centers. However, according to petitioners, since Husky allocated none of the complex-wide costs to a specific common cost center, it improperly allocated zero complex-wide costs to the processes of liquid sulphur handling at the facility and operation of the block storage facilities. Petitioners assert that under generally accepted cost accounting principles, it is proper to allocate the costs recorded in a particular indirect cost center to all cost centers that benefit from the services provided by that particular indirect cost center.

Finally, petitioners maintain that this underallocation of the complex-wide cost to sulphur results in a corresponding underallocation of depreciation to sulphur.

Husky maintains that common costs were properly allocated to all direct functional units related to both liquid and formed sulphur, based on each direct functional unit's percentage of operating costs within the facility, and complex-wide common costs and utilities were allocated on the same basis. Petitioners' proposed allocation, according to Husky, is inappropriate in that common costs would be allocated to other common cost units. Husky claims that petitioners have failed to establish any basis for allocating complex-wide common costs to the other indirect cost units. Nevertheless, Husky argues that the inclusion of common cost units in the allocation does not alter the results, as long as common costs for the gas plant and common costs for the sulphur handling facilities are both accounted for in the equation.

Department's Position: As evidenced in our position on Comment One of the 1992/93 and 1993/94 Final Results, the Department's practice in these reviews has been to allocate common (general) costs based on the direct cost centers which relate to the functional units within the facility. See *1992/93 and 1993/94 Final Results*. Because, as we noted above, the common cost unit at a particular facility is an indirect unit, we find that Husky reported the cost information in accordance with the Department's practice of allocating general costs by allocating complex-

wide common costs based on direct cost centers. Based on the above, petitioners' argument with respect to depreciation is therefore moot.

Comment 3

Petitioners claim that Husky failed to report the sulphur handling costs prior to a certain point in the sulphur production process at one plant. Petitioners note that the Department has instructed Husky, in the previous two reviews, to report all costs "incurred by each facility after sulphur recovery, including . . . liquid sulphur storage." Petitioners maintain that these costs which Husky has not reported are incurred after liquid sulphur is produced at the plant, and thus are sulphur costs under the Department's methodology, regardless of where these costs are recorded in Husky's accounting system.

Furthermore, petitioners argue that there must be, at the least, labor and maintenance costs in addition to energy costs incurred for operating one of the two assets allegedly omitted in Husky's cost reporting.

Petitioners assert that given Husky's alleged reporting deficiencies, the Department should rely on facts available to determine the liquid sulphur storage costs incurred prior to a certain point at this plant.

Husky notes that it has stated for the record that no sulphur handling costs are incurred prior to those associated with the point in the sulphur production process identified by petitioners. Husky argues that its reporting is consistent with the Department's prior decisions on the appropriate split-off point (*i.e.*, subsequent to the sulphur recovery unit).

Department's Position: Husky has certified for the record that no sulphur handling costs are incurred prior to those associated with the point in the sulphur production process identified by petitioners. However, Husky's statement seems to be founded on the presumption that if a cost has been ascribed to the sulphur recovery unit, Husky does not consider that cost to be a sulphur handling cost. In this instance, that presumption stands against the Department's methodology. As the Department stated in supplemental cost questionnaires in both the 1992/93 and 1993/94 reviews, "the reported costs of manufacturing should include costs incurred by each facility after sulphur recovery, including costs associated with pouring sulphur straight to block, liquid sulphur storage, transferring of the product, and a portion of general facilities costs." See

Supplemental Request for Cost Information for Husky in the 1992/93 Administrative Review, at page 3 (February 2, 1996); Supplemental Request for Cost Information for Husky in the 1993/94 Administrative Review, at page 3 (February 2, 1996). This language clearly indicates the Department's determination that liquid sulphur storage costs are incurred after the sulphur recovery functional unit, and should be reported as a cost of manufacture of sulphur for the Department's purposes. Whether these costs are subsumed in the sulphur recovery functional unit at this facility, as Husky has stated they are, is not relevant in light of the Department's statements on this point. That is, because liquid sulphur storage occurs after sulphur recovery, the Department considers it to be a part of the COM of sulphur.

Husky has stated for the record, in its December 6, 1996 submission, that the only sulphur recovery costs associated with a certain tank located prior to the sulphur pipeline are energy costs. Husky also provided an estimate of those costs. Petitioners' assertion that there must be labor and maintenance costs, in light of Husky's statement, is speculative and not supported by evidence on the record of this review. Therefore, we have taken Husky's estimated costs provided in that submission and added it to the sulphur COM for the plant.

With regard to the other asset to which petitioners have referred (and about which respondents have not commented), Section 776(a)(1) of the Act stipulates that if the "necessary information is not available on the record * * * the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." We have no record information regarding costs associated with this other asset. Therefore, for reasons discussed in the analysis memorandum, for the final results of review the Department has also applied the costs for the certain tank discussed above as facts available to this other asset. We have not, as petitioners suggested in their case brief, used block storage costs as facts available to assign a cost to liquid storage, because petitioners have provided no basis which would lead the Department to conclude that block storage costs and liquid storage costs are in any way related.

Comment 4

Petitioners state that the Department should include in COP/CV depreciation

reflective of the actual depreciation costs of the sulphur handling assets at one plant. Petitioners insist that, despite Husky's claim to the contrary, Husky must possess or have access to information regarding construction costs for the plant, because respondent is an owner and one of the original developers of this plant. Furthermore, petitioners note that the Department determined in the 1991/92 review that it is distortive for antidumping purposes not to assign sulphur handling costs to sulphur, even if the respondent does not assign these costs to sulphur in its normal accounting records. Therefore, petitioners maintain that the Department should require Husky to report the information available to it regarding these costs, or, if the Department does not obtain this information, it should determine Husky's depreciation for a particular sulphur handling asset using public information (in this case, a newspaper article) regarding Husky's share of the cost of the asset.

Husky asserts that it has certified that it does not maintain depreciation by asset, that it has adhered to the methodology accepted by the Department in an earlier review of this case, and that the Department should not base Husky's depreciation expense on a newspaper article when Husky has provided actual data. Furthermore, Husky claims that petitioners' recommendations for calculating the cost of production result in a distortion of the costs, as is demonstrated by the fact that petitioners' method would lead to a depreciation expense for the pipeline significantly higher than the depreciation expense associated with forming the sulphur.

Department's Position: We agree with respondents. In the Department's supplemental cost questionnaire of November 26, 1996 (at page 2), we asked Husky to indicate whether it possesses or can obtain sufficient information to determine the specific depreciation expenses associated with sulphur handling assets at any of its plants. Husky clearly stated, in its December 6, 1996 response, that it does not possess and cannot obtain such information, noting that under Canadian GAAP, the net book value of property, plant and equipment associated with oil and gas production is pooled on a property-by-property basis. See Supplemental Cost Questionnaire Response of Husky Oil Ltd., page 6 (Public Version) (December 9, 1996). Therefore, Husky has reported depreciation expenses allocated to the functional units connected to sulphur production on the basis of cost. We agree that this methodology is

consistent with the Department's final determination in the 1991/92 administrative review and have accepted it here. See *Elemental Sulphur from Canada; Final Results of Antidumping Finding Administrative Review*, ("1991/92 Final Results") at 8239, 8245 (March 4, 1996). While petitioners appear to believe that Husky must nevertheless possess or have access to such information because Husky is an owner and one of the original developers of the plant, such speculation cannot form the basis of an adverse ruling from the Department when it stands in direct conflict with Husky's record statement. Moreover, petitioners' proposal to calculate depreciation based on an unaudited figure from a newspaper article is not, in the Department's view, in any way preferable to basing depreciation on actual figures, as the Department has accepted in the prior three reviews of this case. See, e.g. *1991/92 Final Results*, pp. 8245-46.

Comment 5

Petitioners assert that Husky overallocated its crown royalties at one facility to formed sulphur and by doing so "greatly understated" its liquid sulphur COM. According to petitioners, Husky's method derives a different per-unit Crown royalty expense for formed sulphur than for liquid sulphur when Husky paid the same amount of Crown royalties on each metric ton of liquid sulphur produced regardless of whether that sulphur was to be formed, poured to block or loaded for sale in liquid form. Petitioners claim that under the Department's cost methodology, the sulphur common costs at a given plant are not divided between liquid and formed sulphur based on production volume, as Husky did for Crown royalties. Rather, petitioners claim that the sulphur common costs at a plant should be added together, and divided by the common production volume (the sulphur either formed or loaded for sale in liquid form) at that plant. Then, the same resulting per-unit amount of common costs should be included in the COMs of liquid and formed sulphur for that plant.

Husky contends that it has calculated royalty correctly, and that following petitioners' proposed remedy would lead to the "ludicrous" result that royalty would become the largest cost element of the cost of liquid sulphur produced at the facility in question, accounting for over half of the total cost.

Husky notes that, for Crown royalties, it paid 16 $\frac{2}{3}$ percent of the average price of sulphur for each ton of sulphur produced at facilities owned by the

Crown during fiscal year 1995. Since liquid and formed revenues differ (as do liquid and formed costs), Husky claims that as a consequence, the average price is the weighted average of lower-priced liquid sulphur sales and high-priced formed sulphur sales. Husky stresses that the *ad valorem* nature of the royalty charge indicates that this cost differs depending on the sales price of the product. Liquid sulphur, Husky contends, has a lower sales price, a lower production cost, and accordingly must be assigned a smaller portion of the royalty expense.

Department's Position: In the 1992/93 and 1993/94 final results of reviews notice, the Department determined that "because sulphur poured to block must be remelted and then processed through either liquid or forming facilities before it can be sold, block sulphur is not considered finished production." Therefore, we did not include the block volume in the allocation of sulphur costs or the weighted-average COM for the final results. See Comment 5 of *1992/93 and 1993/94 Final Results*.

Husky has calculated its royalty expense for the facility in question based on the presumption that there is a liquid sulphur cost element embedded in the sulphur poured to block which must be captured in Husky's liquid sulphur COM. However, based on the above-referenced Departmental determination in the 1992/93 and 1993/94 reviews that block production is not finished production, no royalty expense should be allocated to sulphur poured to block for the purposes of calculating a liquid sulphur COM.

Furthermore, we note that Husky did not have any sales of liquid sulphur for the POR for the facility in question. Therefore, we determine that all of Husky's royalty expense for this facility should be assigned to formed sulphur. We have recalculated Husky's per unit COM for liquid sulphur accordingly. See *Memorandum to the File: Analysis Memorandum for Husky Oil, Ltd. for the Final Results of the Antidumping Administrative Review of Elemental Sulphur from Canada (1994/95)* page 3 (May 7, 1997).

Comment 6

Petitioner claims that Husky's crown royalty allocation is distortive because it double-allocates the royalties to formed sulphur. Specifically, by first splitting the royalties between liquid and formed sulphur based on production volume, Husky assigned an inappropriate portion of the royalties directly to formed sulphur. Then, according to petitioners, Husky indirectly allocated most of the other portion of the royalties

to that same formed sulphur by dividing that other portion by a volume including the volume of formed sulphur.

Husky argues that its approach in calculating the royalty assessed on formed sulphur is consistent with that taken for all other costs incurred in the sulphur handling facility (except the loading costs which are assigned to specific products). The allocated portion of the royalty payment to liquid sulphur, according to Husky, represents the portion of the royalty associated with the liquid production processes, while the portion charged to the formed sulphur is associated with the formed production process.

Department's Position: Because we have determined that all of Husky's royalty expense for this facility should be assigned to formed sulphur (see Comment 5), the question of double-allocation is moot.

Comment 7

Petitioners assert that Husky failed to include in COM the cost of transferring liquid sulphur to one plant. Petitioners argue that under the Department's sulphur cost methodology, the cost of transferring liquid sulphur is a common cost, and as such must be included in the COMs of both formed and liquid sulphur. Furthermore, petitioners claim that, despite Husky's statements to the contrary, sulphur trucked from certain facilities to another facility could not have all been formed.

Husky states that it would be economically impractical, and "completely illogical," for Husky to incur additional expense to transfer liquid sulphur from one facility to another to sell the sulphur as liquid or to pour it to block. Husky stated for the record that it transferred liquid sulphur to one plant only to form that sulphur. Husky claims that petitioners' supposition that Husky would not know if a portion of the truck volume was poured to block because Husky noted that forming costs cannot be tracked by source begs the question of whether Husky actually incurred the transportation expense for liquid production. Husky concludes that the allocation of transfer costs to liquid sulphur is nonsensical given the fact that the transfer price is greater than the cost of producing the liquid, and that the volume of sulphur affected is so small that the importance of the subject has been overstated by petitioners.

Department's Position: We disagree with petitioners' characterization of the Department's policy with regard to treatment of the cost of transferring liquid sulphur. Specifically, petitioners

appear to have concluded from two separate statements from different prior reviews that the Department necessarily views the cost of transferring liquid sulphur during manufacturing as a cost of producing liquid sulphur, regardless of whether that liquid sulphur is all formed during a particular review period. First, petitioners state that the Department specifically determined in the 1991-92 review that costs incurred in "transferring of the product" are sulphur production costs. See *Memorandum from Joseph A. Spetrini to Susan G. Esserman, Regarding Team Recommendation Related to the Cost Accounting Treatment of Elemental Sulphur from Canada in the 1991-92 Administrative Review*, page 6 (public version) (June 29, 1995). Second, they note that the Department wrote in the 1993/94 review that Husky "should have included the liquid sulphur costs at certain plants * * * in the calculation of its weighted-average COM for liquid sulphur, and deducted the forming costs from the total reported sulphur costs to determine the liquid sulphur costs at those plants." See *Memorandum from Holly A. Kuga to Joseph A. Spetrini in the 1993/94 Administrative Review*, page 4 (public version) (June 4, 1996). Finally, petitioners seem to suggest that Husky itself has treated the cost of transferring liquid sulphur at certain plants as common costs, notwithstanding the fact that all liquid sulphur transferred within these plants was either formed or poured to block during the POR. See *Petitioners' Case Brief*, page 14 (footnote 41).

With regard to petitioners' citation to the 1991/92 review period, we note that the Department was discussing costs incurred in the sulphur handling facility, such as the costs of prilling, slating, remelting, loading, etc., in addition to the costs of transferring the product. The Department considers the cost of prilling to be associated with formed sulphur, and not a common cost of sulphur production. Thus, one cannot reasonably assume that the Department recommended in that review that liquid transferral of the product must necessarily be a common cost. Given that transferral of liquid sulphur is not necessarily a cost of producing liquid sulphur, petitioners' cite to the 1993/94 memorandum concerning the inclusion of liquid sulphur costs in Husky's weighted-average COM for liquid sulphur does not support its point on this issue.

Lastly, we note that there is no indication from the record that all liquid sulphur transferred between certain other plants, which was either formed

or poured to block during the POR, was formed for offshore sales. Therefore, petitioners' reference to Husky's treatment of transferral costs for these plants is inapposite. Most importantly, Husky has stated for the record that during the POR, all sulphur transferred from the plant in question was formed for offshore sales. See Supplemental Cost Questionnaire Response at page 5 (public version) (September 4, 1996). Contrary to petitioners' allegation, this statement does not necessarily contradict Husky's August 2, 1996 response, in which Husky stated that a portion of sulphur from a certain other facility is poured to block or formed for offshore sale at this plant. Specifically, this earlier response may be interpreted as a general description of the disposition of transferred sulphur, and not necessarily as a description pertaining only to the POR. In contrast, the September 4 submission clearly indicated that the applicable time period was the POR.

In this case, because Husky has certified that all liquid sulphur transferred from the facility in question to another facility is formed for offshore sale, the cost associated with that transfer are associated with formed sulphur, not liquid sulphur, much as prilling is considered a cost of formed sulphur. Because all of the sulphur in question was sold offshore, this information is not pertinent to our margin analysis, since we are comparing U.S. sales of liquid sulphur to home market sales of liquid sulphur.

Comment 8

Petitioners claim that the Department should include an allocated portion of plant-wide general facilities expenses at one plant in the calculation of COP/CV. Petitioners assert that Husky did not identify plant-wide general facilities costs at the plant or state whether a portion of these expenses was allocated to sulphur handling, despite the explicit request of the Department. Thus, petitioners argue that the Department should either require Husky to answer the questions originally posed in a supplemental cost questionnaire, or the Department should resort to adverse facts available to calculate these costs.

Husky responds that the Department has determined in every review since Husky was named as a respondent that the gas plant general facilities expenses in a particular lease unit at the plant in question are not related in any way to sulphur production. Husky also states that the Department determined, based on a verification in an earlier review, that the only general facilities costs allocable to sulphur at this plant are

contained in the sulphur handling functional unit.

Department's Position: In response to the Department's question requiring Husky to identify all plant-wide expenses incurred relating to the operation of the entire plant in question, Husky stated that its general facilities functional units were distinct, for the gas plant and for the sulphur handling facility, with "no overlap of costs." See Supplemental Cost Questionnaire Response at page 11 (public version) (September 4, 1996). This corresponds to Husky's description of the cost accumulation system in place which the Department verified in the 1991/92 segment of this proceeding. See *Memorandum to the File: Elemental Sulphur from Canada: Final Results of Antidumping Administrative Review (March 4, 1996)*, at page 2 (March 29, 1996), in which the Department noted that "at verification, we reviewed evidence demonstrating that {a certain lease} related solely to natural gas production while {a certain other lease} related solely to sulphur production." There is no indication that the cost accounting system has changed for this plant since that review (while Husky notes that there have been leases added since then, such a change cannot reasonably be described as the type of change in the accounting system referred to on page D-9 of the Department's original questionnaire in this review). Thus, we find that Husky adequately responded to the Department's inquiry regarding the identification of all plant-wide general expenses relating to the operation of the entire plant. Furthermore, given the structure of cost accounting at this plant, Husky was not compelled to identify lease 630 (another general facilities lease) in response to any of the Department's questions: that lease did not apply to sulphur production in any way.

Comment 9

Petitioners contend that the Department should obtain information necessary to account for the depreciation incurred for sulphur belonging to another company at one plant. Petitioners claim that Husky has added the sulphur production volume of this company for the purpose of calculating the per-unit depreciation expense at this plant, but has not accounted for the other company's depreciation associated with the additional volume. Furthermore, petitioners note that Husky has not "even" asserted that it incurs all of the depreciation for the other company's production volume, and that in this

review, unlike the 1991/92 proceeding, petitioners specifically asked the Department prior to the preliminary results to investigate whether the other company incurred any depreciation for its volume.

Husky notes that, in the 1991/92 review, the Department verified and accepted Husky's allocation of the depreciation expense incurred at this plant over the total production of Husky and the other company. Husky insists that it has followed the same allocation methodology, and the agreement between the two companies has not changed.

Department's Position: In the final results of the 1991/92 review, we stated 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." See *1991/92 Final Results* at page 8246. The record is clear that the allocation methodology followed by Husky in this review is the same as in the 1991/92 segment of this proceeding. Further, the record shows that the agreement between Husky and the other company has not changed. Moreover, the Department verified Husky's allocation of the depreciation expense in the 1991-92 review. The lack of a verification of Husky in the current segment of the proceeding is not sufficient reason for the Department to revisit an allocation methodology which the Department has previously determined to be appropriate, especially where the record indicates that there have been no changes to the applicable agreement between Husky and the other company.

Petitioners' statement that Husky has not "even" asserted that it incurs all of the depreciation incurred for the other company's production volume is misleading, as the Department never required Husky to state what proportion of depreciation it incurs for the other company's production volume. Petitioners also comment that it requested, prior to the preliminary results of this review, that the Department ask Husky whether the other company incurred depreciation for its volume. However, there is no indication on the record of the 1991/92 review that the Department based its decision to include the other company's sulphur production quantity in the calculation of per-unit depreciation expense, without adjusting for some depreciation incurred by the other company, on the fact that petitioners

had failed to ask for such information prior to the preliminary results. In fact, the timing of petitioners' comments regarding depreciation for this plant was not at issue in the 1991/92 review.

Finally, we agree with petitioners that it would be distortive to include the other company's volume in the calculation of the per-unit costs unless all of the depreciation incurred in connection with the other company's volume was incurred by Husky. By the same token, it would also be distortive to exclude the other company's production volume when Husky incurs all of the depreciation. Based upon the fact that Husky followed the same allocation methodology from the previous review, which was specifically verified, and based on the fact that there have been no changes to the agreement between Husky and the other company, we are satisfied that Husky has properly allocated depreciation for this plant in the current review.

Comment 10

Petitioners allege that Husky underreported depreciation for sulphur handling assets at one facility. Petitioners maintain that under generally accepted cost accounting principles, depreciation of fixed assets is based on acquisition cost, not book value (as Husky has done). Petitioners claim that the Department cannot base depreciation on book value rather than acquisition cost when Husky failed to explain and support its use of book value as required by the Department. To do so, petitioners argue, would allow Husky to arbitrarily choose any depreciation method that results in the least amount of depreciation for the subject merchandise.

Petitioners also note that Husky reported no depreciation for the original assets of this facility that Husky acquired. However, petitioners maintain that Husky could not have fully depreciated these original assets by 1993 because it stated that it has not recorded depreciation for this facility in any year. Petitioners also claim that record evidence indicates that the original assets cannot be fully depreciated based on petitioners' understanding of the original purchase date of these assets and the useful life used by Husky for depreciation purposes. Furthermore, petitioners claim that it has been the Department's practice (and is supported by the Statement of Administrative Action) to include depreciation of assets used to produce the subject merchandise in the COP/CV even where the respondent did not record depreciation for those assets

in the normal course of business during their useful lives.

Petitioners state that, due to the alleged deficiencies in Husky's reported depreciation at one facility, the Department should obtain the information necessary to calculate depreciation of the original assets of this facility based on acquisition cost. If the Department does not obtain this information, petitioners state that it should rely on adverse facts available to determine the depreciation for the sulphur handling assets at this facility.

Husky argues that the only asset value associated with this facility was related to upgrading the forming assets. Additionally, Husky claims that the asset summary for this facility, which is on the record of this review, disproves petitioners' claim that Husky could not have fully depreciated the assets by 1993. Finally, Husky argues that it is not Departmental policy to impute an additional depreciation expense when a respondent has fully depreciated relevant assets. On the contrary, according to Husky, the Department's statutory mandate is to calculate actual costs of production.

Department's Position: We agree with respondents. Petitioners have asserted that contrary to Husky's claim, the assets at this plant could not have been fully depreciated by 1993. Petitioners have based this claim on an inference they have made with regard to the circumstances surrounding Husky's obligation to purchase liquid sulphur output from a certain gas plant at this facility. However, we note that there is no indication from the record that this obligation coincided with Husky's acquisition of the facility itself. Furthermore, the record information regarding Husky's recorded depreciation supports Husky's claim that these assets were fully depreciated by 1993. See Exhibit 42 of Husky's December 6, 1996 submission. Therefore, petitioners' argument that this asset could not be fully depreciated by 1993 is unpersuasive.

With regard to the basis of depreciating those assets related to upgrading the forming assets, we note that Husky has calculated depreciation based on actual asset values, which tie to Husky's audited financial statements. See Exhibit 42 of the December 6, 1996 response. In fact, there is no indication that these values, as appearing on the fixed asset summaries for 1993, 1994, and 1995, represent anything other than the actual costs to Husky for the additions.

For the above reasons, we do not agree with petitioners regarding the need to obtain any further information

regarding depreciation at this facility, nor do we believe that Husky's reporting methodology warrants the application of facts available to determine the depreciation for the sulphur handling assets at this facility.

Comment 11

Petitioners contend that Husky failed to follow the Department's method for calculating plant-specific COMs and then weight-averaging those COMs. The method employed by Husky, petitioners assert, improperly shifts costs to the volume of sulphur poured to block, thereby excluding those costs from the COP/CV of sulphur. Additionally, petitioners maintain that Husky has improperly shifted block storage costs (which are to be treated as a common cost of producing liquid and formed sulphur, according to petitioners' interpretation of the Department's methodology) to block sulphur, and that by doing so, it has excluded those block storage costs from the COP/CV of sulphur.

Husky contends that petitioners' claim that Husky did not allocate any costs to block sulphur is "patently incorrect." At one plant, Husky claims that it allocated the costs of the block unit over the block unit throughput, then allocated the costs of sulphur handling over sulphur handling throughput, to determine the cost for the block sulphur product, the liquid sulphur input, and formed sulphur. To weight-average all these facilities, Husky maintains that it included the volume of the block sulphur and the volume of the liquid sulphur input as liquid production.

Husky argues that petitioners would have the Department exclude the block production from the allocation of sulphur handling and block costs, but then include the block volume in weight-averaging these plant costs with the costs of the other facilities to derive the reported, single weighted-average cost. Husky asserts that sulphur cannot be production for one purpose but not for another.

As for the other facilities, Husky claims that its calculations are somewhat different by necessity. For example, at one facility, the block costs are not separately broken down, preventing Husky from allocating block over block volume alone. At another facility, the block costs were allegedly "so low" that Husky chose not to calculate a separate block product cost. Husky suggests that had it calculated a separate block cost, the final per unit block cost would have been the same.

Department's Position: In the 1992/93 and 1993/94 final results of reviews

notice, the Department determined that, "consistent with the Department's decision in the 1991/92 review * * * block costs are appropriate to include as part of the cost of producing sulphur." We also stated that "because sulphur poured to block must be remelted and then processed through either liquid or forming facilities before it can be sold, block sulphur is not considered finished production." Furthermore, based on this determination, we concluded that it would be improper to allocate any sulphur costs to sulphur poured to block. See Comments 5 and 6 of 1992/93 and 1993/94 Final Results. Thus, for this review, we have recalculated Husky's COM for liquid sulphur to include block storage costs, but to exclude block volume. See *Memorandum to the File: Analysis Memorandum for Husky Oil, Ltd. for the Final Results of the Antidumping Administrative Review of Elemental Sulphur from Canada (1994/95)* page 4 and Attachment 2 (May 7, 1997).

Comment 12

Petitioners note that Husky failed to include in COP/CV the cost of sulphur royalties paid to private parties.

Husky acknowledges that it excluded the freehold royalty expense from its cost calculation. Husky claims, however, that the per ton cost is so insignificant that no adjustment to the reported cost for liquid sulphur is necessary.

Department's Position: We agree with petitioners that Husky failed to include in COP/CV the cost of sulphur royalties paid to private parties. Section 776(a)(1) of the Act stipulates that if the "necessary information is not available on the record * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Absent any record information on the method in which sulphur royalties are paid to private parties, we have assumed as facts available that sulphur royalties paid to private parties are a cost common to the production of liquid and formed sulphur, and have allocated these costs based on the facility's direct cost units. See *Memorandum to the File: Analysis Memorandum for Husky Oil, Ltd. for the Final Results of the Antidumping Administrative Review of Elemental Sulphur from Canada (1994/95)*, page 4 and attachment 4 (May 7, 1997).

Comment 13

Petitioners claim that the Department should include at least a portion of sulphur recovery costs in its calculation

of the COM and CV of Husky's sulphur. The Department should do so, according to petitioners, for several reasons.

First, petitioners state that the statute at 19 U.S.C. section 1677b(e)(1)(A) requires that the cost of "fabrication or other processing of any kind" be included in CV. Second, petitioners maintain that generally accepted cost accounting principles require all post-split-off costs to be included in the cost of producing by-products. Third, petitioners argue that the Department's practice in cases in which by-products are the subject merchandise requires that all after-separation costs be included in CV. Fourth, citing *Silicon Metal from Argentina*, petitioners contend that the Department's practice in cases in which by-products are not the subject merchandise requires that all after-separation costs be assigned to the by-product. Fifth, petitioners point to the Department's cost initiation memoranda in the 1992/93 and 1993/94 reviews, noting that they included the cost of the "sulphur plant" (sulphur recovery unit) and "plant supporting facilities" (sulphur handling) in its calculation of the cost of producing sulphur. Sixth, petitioners argue that record evidence shows that the sales value of sulphur and natural gas on a per metric ton basis were roughly equivalent from the mid-1980s through the early 1990s. Finally, petitioners argue that record evidence shows that sulphur revenues were, and continue to be, important considerations in decisions to develop and operate major sour gas facilities.

Department's Position: We disagree with petitioners. Consistent with our established practice for this product, we have determined that costs incurred subsequent to the sulphur recovery unit are appropriately allocated to sulphur production. With regard to the reasons put forward by petitioners to reconsider its methodology in calculating costs for sulphur, we note that the first three of these bases for consideration of the appropriate sulphur cost methodology were raised and addressed in the 1991/92 administrative review of this case. See Comments 2 and 3 of the 1991/92 Final Results notice at 8240-44. The Department's position on these points remains the same. Therefore, we will restrict comment to the latter four points.

Petitioners have cited *Silicon Metal from Argentina*, a case in which the by-product is not the subject merchandise, as a case in which the Department required that all after-separation costs be assigned to the by-product. In fact, in *Silicon Metal from Argentina*, the Department stated that its practice is to

credit the cost of production of the primary product for revenues received as a result of the sale of any by-product. See *Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review*, 58 FR 65336, 65340 (December 14, 1993). There is no discussion of the appropriate stage in the production process at which to divide costs between the primary product and the by-product. In any event, the Department made clear its position in the 1991/92 review that the case of elemental sulphur is unique, "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 H₂S. * * * {i}n order to refine natural gas, Husky must incur costs in the sulphur recovery unit." See 1991/92 Final Results at 8244. In contrast, there is no indication of any legal requirement that either charcoal or quartz fines (by-products in the production of silicon metal) be further processed in order to produce and market silicon metal.

With regard to the Department's cost initiation memoranda in the 1992/93 and 1993/94 reviews, these were issued prior to the final results notice in the 1991/92 review, which determined the appropriate cost methodology for the sulphur under review. In addition, the Department's policy with regard to the criteria needed to initiate a cost investigation states only that "a reasonable methodology" be employed. In light of the fact that the appropriate cost methodology was not finalized until the publication of the 1991/92 final results of review, the Department's decision to act upon a cost allegation that included sulphur plant costs (which did not explicitly reference sulphur recovery unit costs) is in no way determinative of the appropriate cost methodology. Indeed, in their cost allegation for this review, petitioners apparently recognize that the cost methodology used to meet the Department's cost initiation standard does not determine the final cost treatment for a review. Specifically, petitioners stated their belief that the costs it calculated for Husky were understated in several respects. See *Allegations of Sales-Below-Cost by Husky and Mobil*, pp. 3-5 (May 31, 1996).

While petitioners have also cited "record evidence that the sales value of sulphur and natural gas on a per-MT basis were roughly equivalent from the mid-1980s through the early 1990s," there is no discussion in petitioners' case brief as to why this is relevant to the Department's determination that only post-sulphur-recovery costs be

included in sulphur's COM. Petitioners provide no justification for comparing sales values of sulphur and natural gas on a per metric ton basis. Furthermore, the time period referenced ostensibly does not relate to the period of review.

With regard to petitioners' assertion that "record evidence indicates that sulphur revenues were, and continue to be, important considerations in the decision to develop and operate major sour gas facilities," we do not agree with petitioners that the evidence cited by them supports the inclusion of sulphur recovery costs in the COM of sulphur. First, in the 1991/92 review, the Department recognized that Husky's exploration ceased when it was found that the gas stream's H₂S concentration was too high, making commercial development of the field impractical. This was stated by the Department in support of Husky's claim that it does not seek out sour gas for sulphur production opportunities. See *Memorandum to Susan G. Esserman: Team Recommendation Related to the Cost Accounting Treatment of Elemental Sulphur from Canada*, pp. 1-2 (June 29, 1995).

Second, the information put on the record of this review by petitioners is unpersuasive for several reasons. First, petitioners have referred to Husky's financial statements and brochures as indications that its plants were not only built for the purpose of processing natural gas. In fact, the statements to which petitioners have referred are also consistent with those made by a company desiring to offset its gas production costs by maximizing its sales of produced sulphur. The desire of a company to maximize overall profits by selling as much of its by-product as possible does not, however, change the fact that the by-product is not a primary goal of production. Second, petitioners' reference to Shell Oil Canada's document discussing a sour gas project at Caroline is indicative only of Shell Oil Canada's considerations, in 1988, for development at Caroline. Shell Oil Canada's motives, however, are irrelevant to the review of Husky.

Third, petitioners' assertion regarding Husky's motivations for investing remains speculative, as the Department also found in the 1991/92 review. See *1991/92 Final Results* at 8242.

Therefore, given the low percentage for which sulphur revenues account on a corporate-wide basis for this review, as compared to Husky's oil and gas revenues (see *Husky's November 13, 1996 letter to the Department*, page 2) and the lack of record evidence that Husky has built its plants for purposes beyond that of processing natural gas,

we do not find that the evidence supports petitioners' assertion that the Department should include the costs of sulphur recovery in calculating COM.

Comment 14

Petitioners assert that the Department must include profit in CV based on the profit realized on sales made in the ordinary course of trade.

Husky asserts that petitioners' discussion of profit is irrelevant, given that the preliminary results were calculated by comparing weighted-average home market prices with U.S. prices.

Department's Position: We agree with respondent. Petitioners' assertion is moot, given that we have performed the margin calculation based solely on price-to-price comparisons.

Mobil

Comment 15

Petitioners support the Department's assignment of a margin to Mobil based on total adverse facts available, as Mobil's responses are, according to petitioners, so deficient that the Department lacks the basic cost data necessary to calculate the COP and CV of Mobil's sulphur.

First, petitioners assert that Mobil improperly based its initially-reported COM on data for only one self-selected facility which accounted for approximately 5% of Mobil's sulphur production during the POR, and were only estimates which were not proven to bear any relation to Mobil's actual costs as recorded in Mobil's cost accounting system.

Second, petitioners claim that Mobil's supplemental questionnaire response failed to follow the Department's methodology to calculate COP and CV for sulphur, used an improper allocation basis in using the barrel of oil equivalent (BOE), failed to separately identify sulphur costs in the reported figures, and made significant improper offsets to the costs.

Finally, petitioners claim that Mobil substantially revised its reported costs at verification. In and of itself, petitioners maintain, this warrants the application of total facts available to establish Mobil's margin.

Mobil contends that Mobil's supplemental cost submission addressed the Department's concerns regarding its reporting methodology in its first cost submission. Furthermore, Mobil claims that its first cost reporting methodology indeed bears a relation to the company's actual, recorded costs. Mobil also claims that it did not fail to report major costs that are sulphur

production costs, and indeed, under the BOE methodology, all costs subsequent to the sulphur split-off point have been reported.

Mobil claims that the use of the BOE as the basis of its cost allocation does not justify adverse facts available treatment. Mobil claims that: it did not conceal its use of one BOE figure for internal purposes while the Government of Alberta used a higher figure; it never claimed that sulphur was used for heating purposes; and it did not receive explicit instructions from the Department not to use the BOE methodology. Mobil also notes that petitioners have argued against the BOE methodology without proposing an alternative.

Finally, Mobil explains that its cost revisions at the outset of verification pertain to a change in accounting systems during the POR. Mobil asserts that the Department did not object to this change in its preliminary results.

Department's Position: Mobil takes issue with the Department's statement in the preliminary results notice with regard to Mobil's first cost submission. Specifically, the Department stated that Mobil "could not prove that this estimate bore any relation to Mobil's actual costs as recorded in Mobil's cost accounting system." See *Preliminary Results* at 969. In the notice, this statement is included as partial explanation for Mobil's utilization of an entirely different methodology in its cost response to the Department's September 3, 1996 supplemental questionnaire. Mobil did not take issue with the Department's characterization of its initial cost response at that time. In its supplemental questionnaire, the Department asked Mobil to "provide a detailed, clear explanation as to why you have reported estimated costs {accounting for only 5% of production}, rather than basing your reported costs on actual costs incurred for all of your facilities." See *Supplemental Cost Questionnaire* at page 2 (September 3, 1996). In response, Mobil stated that it does not maintain cost accounting records at a level of detail that allows identification of the cost of handling sulphur, and thus it had instead provided a "reasonable estimate of this cost, based on the number of employees required, the time required, and the hourly labor cost, together with the cost of steam generation, power, and administrative expenses." See *Supplemental Cost Response* at page 2. Therefore, while it is true that certain individual elements of Mobil's first estimate of costs were traceable to accounting records, the sulphur cost estimate obviously could not have borne

any relation to Mobil's actual sulphur costs as recorded in Mobil's cost accounting system, based on Mobil's own description of an accounting system which purportedly did not allow identification of the costs of handling sulphur.

Mobil's claim that it did not fail to report major costs that are sulphur production costs under the BOE methodology is irrelevant. Of course, when a company provides total plant costs, then by definition all costs (including, in this case, sulphur costs) would be included. This is not the issue. As we noted in the December 13, 1996 decision memorandum, Mobil did not provide information in the form and manner requested by the Department. See Decision Memorandum, page 4. The Department discovered at verification that sulphur cost centers existed during the period of review for five plants, directly contradicting Mobil's repeated assertions that it did not keep costs in sulphur-specific cost centers. See, e.g., August 5, 1996 cost response at pages 3-4 ("because it does not break out sulphur costs in its accounting system, Mobil does not have available in its normal accounting system separate information for sulphur handling costs"), page 20 ("Consequently, no effort is made to create any costing mechanism for this material"), page 25 ("As such, Mobil assigns no costs to sulphur in its ordinary books and records"); September 25, 1996 supplemental cost response at page 9 ("As explained above, Mobil does not break out the costs associated with sulphur production and therefore cannot report the actual cost of each step of the sulphur production process").

With regard to Mobil's use of the BOE methodology, the Department's December 13, 1996 decision memorandum makes it clear that the Department applied facts available with adverse inference for three reasons: (1) Mobil withheld information requested by the Department, (2) Mobil did not provide information in the form and manner requested by the Department, and (3) Mobil's September 25, 1996 allocation methodology did not verify. See Decision Memorandum at page 4. Clearly, there is no indication from this statement that the inability of Mobil to support its use of the BOE methodology, by itself, caused the Department to apply adverse facts available. Nevertheless, the deficiencies surrounding the use of the BOE methodology are significant, both with regard to Mobil's statements regarding its internal use of the BOE figure as well

as with the overall appropriateness of basing an allocation on the BOE.

First, Mobil stated in its supplemental cost response that it "generally uses a certain BOE per metric ton value * * * for sulphur in its internal reports." See supplemental cost response at page 6 (September 25, 1996). At verification, however, Mobil was unable to provide any documentation showing that Mobil used the figure during the POR, or that it generally "uses" this figure. In fact, Mobil stated at verification that this figure had "probably" not been used since the 1980s, when the company included sulphur reserves in its reserve surveys. See *Cost Verification Report* at page 9 (November 18, 1996). Thus, Mobil could not prove at verification that it had accurately represented its internal use of the BOE value.

Second, Mobil has argued that the Department "had not expressed dissatisfaction with this methodology in any of the previous reviews" (see Case Brief at page 30), and that it had received "no indication from the Department (in either this review or the previous three reviews) that it disagreed with that methodology." See Hearing Transcript, page 97 (March 6, 1997). However, the cost verification report for the 1991/92 review clearly states in its report summary that "this {BOE} methodology might not be an appropriate basis for the allocation of joint costs" (page 2), and also specifically states that: "it was noted by company officials that sulphur is not used as a heat source," (page 5); Mobil "was unable during verification to show how the company settled on {the specific BOE} value" (page 5); and "company officials reported that over the years a number of factors have been used in various management reports to value sulphur, and these values appear to be arbitrarily assigned" (page 6). See *Verification of Cost of Production and Constructed Value: Mobil Oil Canada, Ltd.* (September 26, 1994). While the Department did not discuss the BOE methodology due to overriding problems with Mobil's response in the 1991/92 review, this does not effectively remove the cost verification report from the record, as Mobil seems to imply.

Third, Mobil stated at the hearing (see Hearing Transcript at page 109) that the Department did not send out a second cost supplemental questionnaire addressing Mobil's use of the BOE. We note that section 782(d) of the Act stipulates that the Department is obligated to "promptly inform the person submitting the response of the nature of the deficiency" in the event that a response to the initial request for

information does not comply with the request. Additionally, the Department "shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title." However, section 782(d) also stipulates that if a respondent submits further information in response to the deficiency and the Department finds that this further response is not satisfactory, then the Department may disregard all or part of the original and subsequent responses.

In this review, as the Department noted in the preliminary results notice, 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. See *Preliminary Results* at 980 (emphasis added). This new methodology was necessary due to the fact that, in its initial cost response, Mobil used an estimated 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. See *Preliminary Results* at 980.

Nevertheless, the Department determined that Mobil's revised methodology, as presented in the September 25, 1996 response, was also deficient. Specifically, we noted in our Decision Memorandum of December 13, 1996 (at page 2) that the "allocation methodology * * * did not verify, because the production unit conversion factor applied by Mobil in its response: (1) Does not appear to be a factor consistently applied by Mobil for internal purposes; (2) is not the same value as the factor used by an outside unit (such as the Alberta Government), and (3) converts sulphur production on the basis of its heat content, even though sulphur has no heating value."

Therefore, Mobil's suggestion that the Department is obligated to send out further supplemental questionnaires when respondents have submitted unuseable and inadequate information in their initial and supplemental cost responses is contrary to section 782(d) of the statute.

This review operates, as do all others under the governing statute, under strict time limits. Given the Department's record statements about the BOE and the Department's specific pre-verification directions to Mobil to be prepared to "discuss and support the conversion factor(s) used for BOE (barrel of oil equivalent) in your allocation of costs to sulphur" (see *Cost Verification Outline*, page 5 (October 11, 1996), Mobil had ample notice that the Department would require Mobil to support the use of BOE in its allocation of costs.

Finally, the discovery of unreported sulphur cost centers alone renders Mobil's cost response unreliable, as does the above-mentioned problems with the BOE methodology. Therefore, the issue of the significance of the changes presented at the outset of verification is moot.

Comment 16

Mobil argues that its failure to disclose, prior to verification, that its accounting records contained limited information on sulphur costs does not justify application of adverse facts available. Mobil claims that its statement regarding the ability to track sulphur costs in its cost accounting system had been repeated from an earlier review (the 1991/92 review), while the individual preparing the response for this review was unaware that Mobil's cost accounting records had changed. Mobil believes this carelessness does not justify the treatment it received in the preliminary results for several reasons.

First, Mobil claims that it voluntarily disclosed the "omission" to the Department during the verification, demonstrating its cooperation, and that it is unlikely that the verification team would have discovered, on its own, the existence of these cost centers. Mobil cites, inter alia, *Stainless Steel Wire Rods from Brazil*, in which the Department applied "second-tier" best information available (BIA), after terminating a verification due to the revelation at the outset of verification that a significant portion of home market sales had been omitted. See *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from Brazil*, 58 FR 68862, 68863 (December 29, 1993). Mobil asserts that the Department applied a cooperative BIA rate in that case because the respondent had volunteered the missing information. Thus, Mobil believes that the application of adverse facts available in this case conflicts with the Department's own determination that the voluntary nature of a disclosure

demonstrates that a respondent is cooperative. Mobil also distinguishes this case from *Certain Cut-to-Length Carbon Steel Plate from Sweden*, in which Mobil claims that respondents in that case, unlike this one, made no effort to provide the Department with notice that it would be unable to perform a cost reconciliation. See *Preliminary Results of Antidumping Duty Administrative Review; Certain Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 51898 (October 4, 1996). Mobil also believes that the facts in this case are different from all other cases since 1995 in which the Department has applied total adverse facts available. Specifically, Mobil claims that it "passed" verification, since a number of cost items were "successfully" verified.

Second, Mobil claims that it was not to its advantage to hide the sulphur costs, since the average costs for the plants with sulphur-specific costs is allegedly lower than the average cost calculated using the BOE methodology. Mobil also maintains that it harmed itself by its "omission" and therefore cannot properly be considered uncooperative. Specifically, Mobil asserts that the data from the sulphur cost centers results in a lower average cost for the five plants in question than the average reported under the BOE methodology.

According to Mobil, the data for the plants with sulphur-specific costs contains sulphur production costs as well as handling costs, and therefore do not provide the information requested by the Department. Mobil claims that, for four of the five plants with sulphur cost centers, the data are not responsive to the Department's inquiry. Mobil claims that the titles of these cost centers make it clear that the information in the cost centers includes more than just sulphur handling costs, and that an examination of the individual accounts shows that they cannot be broken out between handling and processing.

Petitioners support the Department's application of adverse facts available, stating that the evidence shows that Mobil did not cooperate with the Department to the best of its ability.

Petitioners argue that Mobil's claim regarding the relative sulphur cost based on the data from the sulphur cost centers is without merit, as the information was not even verified by the Department.

Petitioners also argue that it cannot be readily discerned from the titles of the cost centers that they include more than sulphur handling costs.

Department's Position: Mobil has characterized its failure to disclose the

fact that it kept records at five plants during the POR which included sulphur cost centers as an omission. We note, however, that the issue in *Stainless Steel Wire Rods from Brazil* was the exclusion of a portion of home market sales. The omission of a portion of information is qualitatively different than the representation of the non-existence of that type of information. For example, had Mobil provided sulphur cost center information for three of the five plants which kept sulphur-specific cost centers, the reference to *Stainless Steel Wire Rods from Brazil* might be more relevant. However, the repeated assertions that no such centers were kept, in light of the discovery at verification, go beyond what we believe can be considered an omission, and clearly demonstrate that Mobil did not cooperate to the best of its ability in this review.

Mobil has emphasized its "voluntary" revelation regarding the sulphur cost centers in arguing that the Department should not apply total adverse facts available. Mobil also argues that the Department would have been unlikely to discover the "omission" on its own. With regard to Mobil's "voluntary" disclosure, we note that Mobil in fact revealed that one facility kept sulphur cost centers during the POR. The other four were identified only upon further questioning from the Department. In fact, concerning the facility first identified by Mobil, Mobil stated that such a {sulphur cost} breakout was not available for its other facilities for the POR. See *Cost Verification Report*, pp. 7-8.

Furthermore, Mobil's assumption that the Department would have been unlikely to discover the omission on its own is unfounded. In the cost verification outline (at page 1), the Department specifically stated the following: "We wish to draw your attention to the fact that, as your company has maintained that its cost accounting records, as kept in the ordinary course of business, do not provide for the submission of sulphur cost data in the form which the Department has requested, we will examine those documents which your company in fact keeps in the ordinary course of business to corroborate your claim." See *Letter to Mobil Oil Canada: Sales and Cost Verification*, October 11, 1996.

Mobil argues that it would have been in its interest to utilize the costs in the sulphur cost centers because they would have yielded a lower average cost. Such a claim is without merit, however, for several reasons. First, this assertion is based on unverified data not seen by the

Department until verification. The Department did not verify this data at verification because, as we noted in the preliminary results, it is a "central tenet of Departmental practice that verification is not intended to be an opportunity for submitting new factual information." See *Preliminary Results* at 969-70. Second, to accept the data would have deprived the Department of the opportunity to properly analyze the information and receive clarifying and supplemental information on such data, which could affect the per unit costs. Finally, even assuming Mobil's calculations (as presented in Appendix F of its Case Brief) are correct and are based on accurate and appropriate figures, the data for two of the five facilities indicate a much higher cost of manufacturing than that reported by Mobil.

Whether the data in these cost centers contain sulphur processing costs, or can be divided between processing and handling costs, likewise remains unverified. As petitioners have noted, the titles for these cost centers do not by themselves prove the existence of costs other than sulphur handling costs. Finally, even assuming, arguendo, that there may be sulphur processing costs included with the handling costs, this would still provide a more sulphur-specific cost pool from which to perform some type of allocation.

Comment 17

Mobil argues that it had a "good-faith belief" that its responses were fully responsive to the Department's questionnaires.

Petitioners respond that Mobil's assertion that it was cooperative reflects its claim that because sulphur is a waste product (a claim about which petitioners take issue), it cannot report sulphur costs in the form and manner required by the Department. According to petitioners, even more important is that the record shows that Mobil did not make an effort to obtain these data, even though Mobil has information available to it to comply with the Department's requests.

Department's Position: Whether or not Mobil had a "good-faith belief" that its responses were fully responsive to the Department's questionnaires, Mobil has characterized its error as "careless," and that it could have been "more diligent," and that it was inattentive in preparing the response. Additionally, as we noted in the preliminary results, Mobil stated at verification that it had not sought to ascertain whether the producing plants maintained sulphur cost centers. See *Preliminary Results* at 970.

The Department has made no pronouncement regarding Mobil's intentions in this review. Indeed, our application of total adverse facts available in this case is not based in any manner on any belief in this company's intentions. As we stated in the preliminary results, we determined that, under section 776(a)(2)(A) of the Act, Mobil failed to provide the Department with the requested cost information, and that such failure constituted a withholding of information within the Act's meaning. We further determined, under section 782(e), that the submitted cost data was not useable. Finally, we determined, as provided by section 776(b), that an adverse inference was warranted because Mobil failed to cooperate by not acting to the best of its ability to comply with requests for information. See *Preliminary Results* at 970-71. We do not question Mobil's intentions in making any of the above determinations.

Comment 18

Petitioners contend that the Department should assign a higher margin to Mobil as required by the Department's established practice.

First, petitioners assert that the application of the 7.17% rate applied in the preliminary results would reward Mobil for its failure to cooperate with the Department. According to petitioners, the statute only requires the Department to corroborate secondary information to the extent practicable. Petitioners note that the SAA (at 870) states that the "fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference."

Second, petitioners argue that the 28.9% rate considered in the preliminary results can be corroborated, since the petitioners believe that the record shows that this rate was calculated in the LTFV investigation.

Third, petitioners point to several other higher margins which petitioners maintain are calculated rates from the 1970s.

Finally, petitioners state that the Department should apply the higher of the final rates calculated for Husky in the 1992/93 and 1993/94 reviews if that rate exceeds the other rates identified by petitioners.

Mobil argues that the Department has not abused its discretion in its application of the 7.17% rate as total adverse facts available. First, Mobil contends that the use of any costs on the record would lead to, at the most, a *de minimis* margin. Also, the application of any margin above *de minimis* prevents

a respondent from becoming eligible for revocation. Therefore, any margin is punitive.

Second, Mobil argues against the application of the 28.9% rate, maintaining that it is Departmental policy to choose as facts available a rate calculated by the Commerce Department, not the Treasury Department. Moreover, Mobil contends that the evidence put forward by petitioners does not even prove that this rate was calculated by the Treasury Department.

Third, petitioners' suggested use of several other rates calculated for review periods in the 1970s is unsound, according to Mobil, because the record provides no details as to how those rates were calculated.

Fourth, Mobil contends that the record shows it has cooperated with the Department, and thus should not receive a rate higher than 7.17%.

Finally, Mobil argues that, in considering a rate to apply for the final results, the Department may not properly apply a rate that is itself based on best information available.

Department's Position: As the Department noted in the preliminary results notice, we were unable to corroborate the rate of 28.9% based on the Department's official records of this proceeding. This rate was used as a "first-tier" best information available (BIA) rate in the 1991/92 review. While we agree with petitioners that record evidence suggests that this rate stems from the original investigation, it is also true, as Mobil has noted, that there is no definitive evidence that this rate was calculated, and this of course precludes the existence of evidence detailing how it was calculated. Likewise, the proposed rates of 87.65% and 84.56% stem from review periods in the 1970s and the record also lacks information regarding how these were calculated. As respondents have noted, the Department has limited itself in the selection of BIA rates from past reviews to reviews conducted by the Commerce Department, because the records pertaining to reviews conducted by the Treasury Department are less complete. See, e.g., *Roller Chain, Other Than Bicycle, From Japan*, 57 FR 3745 (January 31, 1992); *Pulton Chain Co. v. United States* 17 CIT 1136 (CIT 1993).

Petitioners' discussion of the 75.19% rate from the period 2/1/74 to 11/30/80, in addition to suffering from the same limitations as those discussed above, is a rate from a preliminary results notice, and therefore cannot be considered corroborated since it does not reflect the Department's final calculations for that review period.

We agree with Mobil that, to the extent that any margin above *de minimis* precludes that respondent from becoming eligible for revocation, it may be disadvantageous to that respondent. However, it does not follow that the application of any above-*de minimis* rate is punitive, as an above-*de minimis* margin may still be lower than the margin assigned to the company in a previous review period.

We have applied as total adverse facts available the highest calculated margin from a previous review. Because the final rate in the 1992/93 rate for Husky is 40.38%, we have chosen this rate as Mobil's rate for the POR. This rate meets the criteria for corroboration established under section 776(c). Specifically, as noted in the preliminary results notice, "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." See *Preliminary Results*, page 971.

Comment 19

Mobil argues that, if the Department concludes that an adverse inference is warranted, it should limit this adverse inference to cost of production and not to Mobil's total response. Mobil states that there are several alternatives in assigning a cost to Mobil's liquid sulphur, including the use of Husky's costs. Mobil states that its inadvertent error did not prevent the Department from verifying the cost information. Thus, according to Mobil, the Department's statement that its policy of applying total adverse facts available under these circumstances is meant to prevent a respondent from manipulating margin calculations by permitting the Department to verify only that information which the respondent wishes to use in its margin calculations is not applicable.

Petitioners assert that it is Departmental practice to reject a respondent's submitted information *in toto* where a respondent fails to provide reliable cost data.

Department's Position: While Mobil states that its "inadvertent error" did not prevent the Department from verifying the cost information, we do not agree that we were in a position to verify the cost information uncovered at verification. As we stated in the preliminary results notice, the Department could not verify this information because it met none of the criteria set forth in the Department's verification outline regarding the submission of new information. See

Preliminary Results at 970. As these criteria were presented to Mobil prior to verification, Mobil had reason to believe that the Department would not accept such information at verification. Therefore, we have no grounds to conclude that the Department's policy of applying total adverse facts available in order to prevent a respondent from manipulating margin calculations by permitting the Department to verify only that information which the respondent wishes to use in its margin calculations is inapplicable in this case.

Furthermore, we agree with petitioners that it is Departmental practice to reject a respondent's submitted information *in toto* where a respondent fails to provide reliable cost data. For a full explanation of this policy, please refer to the preliminary results notice. See *Preliminary Results* at 970-71.

Nevertheless, we note that none of the alternatives suggested by Mobil in this case would appropriately serve as adverse facts available because none of them is adverse. See *Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel from Sweden*, 62 FR 18396, 18402 (April 15, 1997).

Final Results of Reviews

As a result of our review of the comments received, we have changed the results from those presented in preliminary results of review. Therefore, we determine that the following margins exist as a result of our review:

Manufacturer/exporter	Time period	Margin (percent)
Husky Oil Ltd.	12/1/94-11/30/95	¹ 0.33
Mobil Oil Canada, Ltd.	12/1/94-11/30/95	² 40.38

¹ This is a *de minimis* rate.

² As described above, this total facts available rate is Husky's rate from the 1992/93 review period.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisal instructions directly to the Customs Service. Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of this merchandise, entered or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that if the

rate for a particular product is *de minimis i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously 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, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers will be the "all others" rate made effective by the final results of the 1993/94 administrative review of these orders (see *1992/93 and 1993/94*

Final Results). These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

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 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 Act 19 U.S.C. 1675(a)(1) and section 353.22 of the Department's regulations.

Dated: July 7, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-18446 Filed 7-14-97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On August 30, 1996, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative reviews of the antidumping duty finding on elemental sulphur from Canada. The reviews cover the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald Little or Maureen Flannery, Antidumping/Countervailing Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

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 November 26, 1993 and December 6, 1994, the Department published in the **Federal Register** notices of opportunity to request an administrative review of this antidumping finding for the periods December 1, 1992 through November 30, 1993 (58 FR 62326), and December 1, 1993 through November 30, 1994 (59 FR 62710), respectively.

With respect to the 1992/1993 administrative review, on December 30, 1993, Pennzoil Sulphur Company (Pennzoil), a domestic producer of elemental sulphur, requested that we conduct an administrative review of Alberta Energy Co., Ltd. (Alberta), Allied-Signal Inc. (Allied), Brimstone Export (Brimstone), Burza Resources (Burza), Fanchem, Husky Oil Ltd. (Husky), Mobil Oil Canada, Ltd. (Mobil), Norcen Energy Resources (Norcen), Petrosul International (Petrosul), Saratoga Processing Co., Ltd. (Saratoga), and Sulbow Minerals (Sulbow). On December 21, 1993, Petrosul requested revocation of the finding in part, with respect to itself. The review was initiated on January 18, 1994 (59 FR 2593).

With respect to the 1993/1994 administrative review, on December 29, 1994, Pennzoil requested that we conduct an administrative review of Alberta, Husky, Mobil, Norcen, and Petrosul. On December 28, 1994, Petrosul requested revocation of the finding, in part, with respect to itself, and, on December 30, 1994, Mobil requested an administrative review of its sales. The review was initiated on January 13, 1995 (60 FR 3193).

On August 30, 1996, the Department published in the **Federal Register** the preliminary results of these reviews of the antidumping finding on elemental sulphur from Canada (61 FR 45937). We held a public hearing on December 11, 1996. The Department has now conducted these reviews 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 periods of review are December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994. The 1992/1993 review covers eleven companies, and the 1993/1994 review covers five companies.

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. Pursuant to section 291(a)(2)(B) of the Uruguay Round Agreements Act (URAA), the provisions of that Act apply only to reviews requested on or after January 1, 1995. Thus, although the 1993/1994 review was initiated after the effective date of the amendments pursuant to the URAA, those provisions do not apply to this review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Pennzoil and Freeport-McMoRan Inc. (petitioners), Husky, and Mobil.

Comment 1

Husky argues that the Department incorrectly assigned all of the common costs for a particular Husky facility solely to liquid production when the majority of the work and the costs in that facility related to forming of sulphur for later sale. Husky argues that there are three "direct" functional units within this facility—remelt (remelting sulphur which has been poured to block), block (pouring sulphur on the ground when it cannot be sold) and forming (forming liquid sulphur into solid shapes). Husky asserts that the Department determined again in these reviews that of those three units, only the remelt and block units incur joint costs—i.e., costs applicable to the production of liquid sulphur. Husky argues that the "common" costs (e.g., cost associated with road maintenance) at the facility relate to the entire complex. Husky contends that those common costs cover all three direct functional units. Husky asserts that in its questionnaire responses in the 1992/93 and 1993/94 reviews, Husky defined all of the merchandise produced for this complex as formed sulphur. Husky contends that it was therefore unnecessary to split the common costs among the three direct functional units within the facility. Husky argues that if all of the costs, both direct and