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 of Elemental Sulphur from Canada.

SUMMARY: On January 6, 1999, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada (64 FR 848) (''*Preliminary Results*''). This period of review (''POR'') is December 1, 1996, through November 30, 1997. 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 the review, as discussed below. However, the margin remains *de minimis.*

We determine that respondent has not made sales below normal value during the period of review. Thus, we will instruct the U.S. Customs Service to liquidate entries during the POR without regard to antidumping duties.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references 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 Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1999, the Department published in the **Federal Register** (64 FR 848) the preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada. We gave interested parties an opportunity to comment on our preliminary results. We received written comments on February 5, 1999 from Husky Oil, Ltd. (''Husky''), the only respondent in this review, and on February 24, 1999 from petitioner, Freeport McMoRan Sulphur, Inc. (''Freeport'').

Under section 751(a)(3)(A) of 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. On March 8, 1999, the Department extended the time limit for the final results in this case. *See Elemental Sulphur from Canada: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review,* 64 FR 10983. 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.

Fair Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than fair value, we compared the Export Price (''EP'') to the Normal Value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of the *Preliminary Results.*

Interested Party Comments

Comment 1—Revocation. Husky argues that the Department should reconsider its preliminary decision not to revoke the antidumping duty order in whole or with respect to Husky, based on the unique facts of this case and the U.S. International Trade Commission's (''ITC'') determination ''to revoke the elemental sulphur antidumping duty order on January 1, 2000.''

Husky argues that the Department has the authority to revoke an antidumping duty order if any of the following situations exist: (1) Dumping is no longer occurring and/or dumping is no longer causing injury (citing the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 11); (2) ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * pertains have expressed a lack of interest in the order, in whole or in part'' (citing 19 CFR 351.222(g)(i)); (3) ''(o)ther changed circumstances sufficient to warrant revocation or termination exist'' (citing 19 CFR 351.222(g)(ii)). Husky also contends that the Department has demonstrated its ability to interpret its regulations in a flexible manner by granting revocation based on an exporter's ability to sell at fair value for several years, despite that exporter's failure to file a timely request for revocation (citing *Color Television Receivers From the Republic of Korea: Final Results of Changed Circumstances Antidumping Duty Review,* 63 FR 46759 (September 2, 1998) (''*Color Television Receivers from Korea*'')).

Husky alleges that the Department and petitioner knew that Husky's argument for revocation was partly based on Husky's reliance upon the new intervening year rule at 19 CFR 351.222(d), even though the intervening year Husky relied upon—the 1995/96 review period—would have been reviewed under prior regulatory authority. Husky notes that, in the *Preliminary Results,* the Department determined that the 1995/96 review period cannot be viewed as the second of three consecutive review periods because the new regulations cannot be applied retroactively to cover periods subject to the Department's previously applicable regulations. Husky disputes this conclusion on the grounds that the new regulations, while published on May 19, 1997, were in fact first introduced to the public for comments in February of 1996. Husky argues that, while the new regulations cover reviews requested on or after July 1, 1997, they do not state that the intervening year rule may not apply to reviews conducted under earlier versions of the Department's regulations.

Husky argues that one possible reason why Freeport did not object to Husky's right to request revocation in this review was because the Department had not stated that respondents could not apply the intervening year rule as soon as the final regulations entered into effect. Husky argues that the Department's interpretation of its regulations in the *Preliminary Results* amounts to a finding that the ''intervening year rule did not, in fact, become effective in July 1997 as mandated by the regulations.'' Instead, Husky alleges, the Department's preliminary results decision means that the intervening year rule did not become effective until July of 1998. Husky argues that the Department ''should enforce the effective date of its regulations and allow Husky's revocation to proceed on the basis that no dumping was found during the 1995/96 intervening year.'' Husky argues that Freeport would not be prejudiced by application of the intervening year rule in this case because Freeport had the opportunity to request a review of the 1995/96 period.

In addition, Husky contends that the Department should grant Husky's request for revocation based on its claims that it did not sell subject merchandise at less than fair value for three consecutive years, that it will not dump in the future, and that the Department verified that Husky is not likely to dump in the future. Further, argues Husky, because of the ITC's sunset determination, there can be at most two more reviews of this order, covering the 1997/98 and 1998/99 review periods. Accordingly, Husky states, the Department need only determine that Husky will not sell at less than fair value in 1999. Husky points to the fact that it has executed a certification stating that it will not dump in the future.

In summary, Husky argues that the Department should immediately terminate the antidumping duty order on sulphur from Canada because: (1) Husky has not sold at less than fair value since 1994; (2) Husky has certified that it will not sell at less than fair value in the future; (3) the ITC has determined that sulphur from Canada is not causing injury to the U.S. sulphur industry; (4) Freeport has been deemed unrepresentative of the U.S. sulphur industry by the ITC; (5) most of the other Canadian sulphur producers have already been revoked from the order; (6) the intervening year rule was designed to eliminate unnecessary reviews, such as the 1997/98 and 1998/99 reviews; and (7) an antidumping order should not exist if dumping is no longer causing injury (citing the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 11).

Petitioner argues that Husky requested revocation based on three consecutive years of no dumping pursuant to 19 CFR 351.222(b). Petitioner notes that ''Husky did not request revocation based on any U.S. producers' lack of interest in the order, other changed circumstances, or any other basis on which the Department could revoke the order.'' Freeport argues that the Department should therefore reject Husky's recent claims for revocation and only consider Husky's revocation request based on section 351.222(b). Also, Freeport argues that to consider Husky's recent revocation claims on some other regulatory basis would ''violate fundamental principles of due process and be prejudicial to petitioner.''

Petitioner notes that section 351.222(b) requires that the foreign producer must have sold subject merchandise at not less than normal value for at least three consecutive years as a first step to be considered for revocation. Petitioner cites the Department's preliminary results in this case and supports the Department's preliminary decision not to apply section 351.222(d) retroactively to review periods governed by prior regulations.

Petitioner contends that Husky's reliance on the proposed new regulations is misplaced, because proposed regulations can and often do change before being finalized. Petitioner argues that just because Husky requested revocation after the new regulations entered into effect ''does not constitute a basis for applying section 351.222(d) of the Department's new regulations to a review period to which the Department's prior regulations apply.'' Petitioner argues that Husky's claim that it was on notice of the rule before the deadline for requesting a review of the 1995/96 review period is in error. Petitioner notes that the final rule was published on May 19, 1997—after the deadline for requesting a review of the 1995/96 review period. In addition, petitioner notes that 19 CFR 351.701 states that the Department's regulations ''apply to all administrative reviews initiated on the basis of requests made on or after the first day of July, 1997.'' Thus, petitioner argues that the 1996/97 administrative review is the first review governed by the new regulations.

Petitioner also argues that the Department did not in fact ''verify'' that Husky is not likely to dump in the future, because the Department only verifies previously submitted facts at verification. Petitioner further argues that the Department does not issue findings at verification, such as a finding of no likelihood of future dumping. Also, petitioner notes that the Department must determine that Husky did not sell sulphur for export to the United States at less than normal value for three consecutive years and that there is no likelihood of future dumping. Petitioner notes that the Department did not preliminarily hold that Husky did not sell at less than normal value for three consecutive years; hence, Husky does not qualify for revocation regardless of Husky's likelihood of future dumping.

Finally, petitioner contends that if the Department were to revoke the order with respect to Husky, Husky would sell the subject merchandise at less than normal value. Petitioner notes that Husky has reduced its U.S. export volume since the 1991/92 review and has taken further steps with regard to limiting those exports subject to antidumping duties. For a further discussion of the petitioner's arguments, which entail proprietary information, see petitioner's July 15, 1998 letter to the Department (proprietary version).

Department's Position: We agree with petitioner. As the Department stated in its Preliminary Results (at 850):

> [T]he Department's policy is not to apply [section 351.222(d)] retroactively to include periods subject to review under earlier versions of the regulations. As we explained in a recent administrative review of the countervailing duty order on agricultural tillage tools from Brazil, ''[a]lthough section 351.222(d) of the Department's regulations provides that the Secretary may revoke the order in part when there are unreviewed years in the period upon which revocation is based, the regulations do not provide for the application of this provision retroactively to review periods that would have been controlled by the Department's pre-Uruguay Round regulations.'' Because the Department does not apply section 351.222(d) of the new regulations retroactively, any unreviewed periods that apply to the three-consecutive-year revocation requirement must be periods reviewed under Part 351. Husky's 1995–96 POR thus cannot be considered the second of three consecutive PORs in this revocation analysis. Therefore, because Husky has not satisfied the threshold requirement that revocation be based upon sales ''at not less than normal value for a period of at least three consecutive years,'' we do not reach the additional criteria for revocation enumerated at 19 CFR 351.222 (b)(2) (ii) and (iii).

We do not agree with Husky's argument regarding the timing of the issuance of the Department's proposed regulations. While the proposed regulations were introduced before the deadline for requesting a review of the 1995/96 review period, those regulations were not final. That the proposed regulations do not constitute enforceable regulations cannot be disputed. Furthermore, the proposed regulations did not contain a proposed provision regarding the applicability dates for the new final regulations.

As noted by petitioner, and as stated in Subpart G of the current regulations, the new regulations apply to all administrative reviews initiated on the basis of requests made on or after July 1, 1997. Under this rule, the 1996/97 administrative review is the first review governed by the new regulations. While we agree with respondent that the new regulations did not explicitly state when the intervening year rule could be applied, we find that the regulations' silence on this issue affords the Department sufficient discretion to interpret Subpart G as prohibiting retroactive application of the intervening year rule set forth in section 351.222(d). Also, retroactive application of the intervening year rule is potentially prejudicial to petitioner, as the regulations governing the 1995/96 POR contained no such rule. It would thus be unfair to petitioner to alter the legal status of the 1995/96 POR subsequent to any opportunity to request a review of that period. Finally, we note that a decision not to apply the intervening year rule retroactively accords with the general preference in administrative law against the retroactive application of new regulations.

We also note that it is not the case, as asserted by Husky, that the ITC in its sunset review ''revoked'' the antidumping duty order on elemental sulphur from Canada. Rather, the ITC found that revocation of this order would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Elemental Sulphur From Canada,* 64 FR 2232 (January 13, 1999) (Investigation No. AA1921–127). Pursuant to this determination, the order on elemental sulphur from Canada is scheduled to be revoked effective January 1, 2000. However, all entries made before that date will remain subject to the administrative review procedures set forth at section 751 of the Act.

Regarding Husky's other revocation arguments, we find that Husky's reliance on the Department's changed circumstances review in *Color Television Receivers from Korea* is misplaced. In that case, the respondent, Samsung, had satisfied the threshold revocation requirement of three consecutive years of *de minimis* margins. In fact, at the time of that changed circumstances review, Samsung had sold subject merchandise at not less than foreign market value for six consecutive years. *See Color Television Receivers from Korea; Preliminary Results of Changed Circumstances Antidumping Administrative Review,* 62 FR 68256 (December 31, 1997). Further, the Department determined that it was not likely that Samsung would sell subject merchandise at less than foreign market value in the future. *Id.* By contrast, in this case, as explained, the Department does not reach the likelihood analysis because Husky cannot demonstrate three consecutive years of no sales at less than normal value. In this regard, we note that the Department in fact has already considered these arguments in the context of Husky's request that the Department initiate a changed circumstances review, and our position has been placed on the record of this review. Specifically, the Department considered, and rejected, these arguments in full in its *Decision Memorandum from Edward Yang to Joseph A. Spetrini,* dated March 22, 1999.

We agree with petitioner that we did not ''verify'' that Husky is not likely to dump in the future, as argued by Husky. The purpose of verification is to establish that information submitted on the record of a review or investigation is accurate. It is not the objective of a verification to consider legal arguments and make on-the-spot legal conclusions regarding such information. Thus, the Department's verification team merely reviewed evidence which Husky claims supports its assertion that it is not likely to dump in the future. In any event, as petitioner notes, the issue is moot, since section 351.222(d) does not apply.

Likewise, Husky's assertion that it has demonstrated that it has not sold subject merchandise at less than fair value since 1994 is unpersuasive, because, as noted above, Husky is not eligible for revocation based on three consecutive years of no dumping. For these reasons, we are not altering our determination that Husky has not met the regulatory criteria to be considered for revocation.

Comment 2—General and Administrative (''G&A'') and Financial Expenses. Husky alleges that the Department erred when it adjusted Husky's cost of sales (''COS'') figures used to calculate Husky's consolidated financial expense ratio and company-wide general and administrative (''G&A'') expense ratio for the preliminary results. According to Husky, the Department's preliminary adjustments overstate cost of production (''COP''). Moreover, Husky maintains that the Department had accepted Husky's general and interest expense rate calculation methodology in prior reviews. Husky further elaborates that the COS figure reported on the financial statements cannot be used because these figures do not account for all the costs associated with manufacturing the products for sale. According to Husky, other costs of manufacture, such as depreciation, depletion, and exploration, as well as the cost of manufacture for downstream products, are listed separately in its financial statements (*i.e.,* not included in the COS figure reported on the financial statements).

According to Husky, the COS figure on the financial statements only reflects the cost of its operations and not the value added in the downstream operations. Husky states that the downstream portion of the cost is captured in the sales revenue account, where the margin (the difference between the sales revenue and the cost of sales) is recorded. Therefore, the total sales revenue and the COS are understated, as Husky does not record the revenue from the downstream operations in its revenue figure and does not record the cost of downstream operations in its COS. Therefore, Husky contends that these figures should not be used in calculating G&A and financial expense ratios.

In addition, Husky argues that the Department has, in other cases, adjusted COS to include costs that may not be recorded as part of COS in a company's financial statements, but that the Department nevertheless deems to be part of COS (citing *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory from Taiwan,* 63 FR 8909, 8921–22 (February 23, 1998) (''*SRAM from Taiwan*'')).

Petitioner argues that Husky has understated its reported G&A and financial expenses by overstating COS figures used to calculate these amounts. According to petitioner, Husky has inflated its COS figure in the following ways: First, Husky increased COS in its financial statement ''purportedly to account for the cost of its 'downstream' operations that Husky claimed was not reflected in its financial-statement cost of sales.'' However, petitioner claims, Husky has already included this cost in the COS figures. To support its position, petitioner references Husky Oil Operation Ltd's (''HOOL'') G&A worksheet submitted as Exhibit 16 of its April 2, 1998 questionnaire response, that indicates that the total cost of downstream merchandise was recorded in HOOL's COS figure.

Second, petitioner notes that Husky's revised COS figures include marketing activities. According to petitioner, this type of expense should not be included in the calculations.

Third, petitioner states that if Husky's assertion is correct, then Husky should have only added to its COS figure the cost of further processing the ''upstream'' products into the ''downstream'' products.

Fourth, petitioner argues that Husky did not provide information to allow the Department to ''determine whether Husky's 'downstream' lines of business incur G&A expenses proportionate to those incurred by Husky's 'upstream' production operations.'' Petitioner argues that the G&A incurred in respondent's downstream operations may be less than the G&A incurred in its upstream operations. If this is the case, including the COS figures for the downstream operations in the financial-statement COS figures would ''inflate'' the COS figure.

Finally, petitioner contends that it is the Department's practice for the respondent to bear the burden of ''establishing entitlement to an adjustment,'' citing the following decisions by the Court of International Trade (''CIT''): *Koyo Seiko* v. *United States,* 905 F. Supp. 1112, 1116 (Ct. Int'l Trade 1995); *NSK, Ltd.* v. *United States,* 825 F. Supp. 315, 320 (Ct. Int'l Trade 1993); and *Timken Co.* v. *United States,* 673 F. Supp. 495, 513 (Ct. Int'l Trade 1987). Petitioner argues that, for the above reasons, the Department should not rely on Husky's reported G&A and financial expense ratios for the final results.

Department's Position: We disagree with Husky that it properly calculated its reported COS used to calculate both G&A and interest expenses. Normally, we rely on the COS reported on the audited financial statements of the respondent to allocate general and interest expenses. This methodology avoids any distortions that may result if greater amounts of company-wide general expenses or financial expense are allocated disproportionally between products. *See Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31412, 31433 (Comment 29) (June 9, 1998). In this instance, Husky deviated from the Department's normal methodology and calculated surrogate COS figures. To calculate these surrogate figures, Husky increased the COS figures reported on its income statements to include depletion, exploration, and its downstream production costs. As a result, these COS figures are not on the same basis as the reported cost of manufacturing (''COM'') and, in fact, are overstated. Specifically, we disagree with Husky that it is appropriate to include depletion, exploration, and certain additional downstream costs as a component of the COS figures because the reported COM excludes these items. The Department has consistently stated in prior cases that the two figures should be on the same basis (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada,* 64 FR 17324, 17334 (April 9, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68434 (December 11, 1998); and *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 63 FR 32833, 32837 (June 16, 1998)).

We also specifically disagree with Husky's inclusion of additional downstream manufacturing costs in the COS figure because the COS figure reported on Husky's financial statements intentionally omits this cost in accordance with Canadian Generally Accepted Accounting Principles (''GAAP''). For example, Husky has classified its operations as either upstream (*e.g.,* production of crude oil, natural gas, sulphur, etc.), downstream (production of refined oil, asphalt, etc.), upgrader, or corporate. In the normal course of business, the upstream operations transfer their finished products to the downstream operations for further processing through intra-company transactions. These operations are not separate entities that require consolidation, but merely separate business units that make up a single corporation. Thus, Husky's COS figures reported on the income statements reflect the upstream operations costs and the appropriate portion of downstream costs in accordance with Canadian GAAP (*see Verification of Cost of Production (''COP'') and Constructed Value (''CV'') Data for Husky Oil, Ltd.,* dated December 1, 1998, (''*Cost Verification Report*''), Exhibit 22). As a result, intra-company transactions are appropriately eliminated to avoid double counting both sales revenue and costs. Therefore, it would be inappropriate to allocate G&A and financial expense to intra-company transactions since these amounts are normally eliminated when preparing the companies' financial statements. *See Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Round Wire from Canada,* 64 FR 17324, 17334 (April 9, 1999) and *Certain Cut-to-Length Carbon Steel Plate from Brazil,* 63 FR 12744, 12749 (Comment 8) (March 16, 1998).

Petitioner's arguments about whether Husky's marketing activities are reflected in Husky's financial statement COS and whether Husky's downstream operations incur G&A expenses proportionate to Husky's upstream operations are moot because we are not using Husky's submitted COS figures.

We also disagree with Husky's reliance on *SRAM from Taiwan,* where the Department addressed the inclusion of certain costs in the calculation of COP, not COS, as in the instant case. Thus, *SRAM from Taiwan* is unrelated to the calculation of COS, and is inapplicable.

We note that, with respect to Husky's observation that the Department has accepted Husky's G&A calculation in prior reviews, the Department may change its position on a specific issue taken in prior proceedings as long as it provides an explanation for the change (*see Rust* v. *Sullivan,* 500 U.S. 173, 1860187 (1991)). In this case, Husky's increase to COS, which results in the use of a figure expressed on a different basis than COM, does not follow the Department's normal practice for calculating G&A expenses. Furthermore, there is no basis in this record to justify deviating from the Department's normal practice. Consequently, we are following our normal practice in this review, which is to ensure that COS and COM are calculated on the same basis.

For the reasons stated above, we have calculated Husky's G&A and financial expense ratio in accordance with our normal methodology using a COS figure that was on the same basis as the reported COM. For the final results, we calculated a general expense rate that is made up of company-specific G&A and corporate-wide G&A expense. Specifically, we calculated the company-specific (*i.e.,* HOOL) G&A expense rate by dividing HOOL's unconsolidated G&A expense by its unconsolidated COS figure, which we increased to include depreciation expense. We then calculated a company-wide G&A expense rate for general expenses that benefitted all the entities of the consolidated HOOL Group. The denominator in this instance was HOOL's consolidated COS figure, which we increased to include depreciation expense. For the calculation of interest expense, we are continuing to use Husky's consolidated financial statements as we did in the *Preliminary Results. See Analysis Memorandum of Husky for the Final Results of the Administrative Review of Elemental Sulphur from Canada for the period December 1, 1996 through November 30, 1997 (''Analysis Memo: Final''),* dated July 6, 1999, for a complete discussion.

Comment 3—Adjustment to reported interest expenses. Husky alleges that in the preliminary results, the Department incorrectly included interest expenses paid on subordinated debt and dividends of Class C shares in the calculation of Husky's total interest expenses. Husky provides the following reasons as to why this inclusion is incorrect.

First, Husky argues that the interest on subordinated shareholders' loans and dividends on Class C shares are amounts held by external shareholders in proportion to their shareholdings. Therefore, Husky argues that these expenses are not interest expenses but rather dividend and loan payments based on equity positions. Second, Husky argues that under Canadian GAAP, these loans are not treated like normal debt, and that the Department should follow prior reviews of this order, and reverse its preliminary decision. According to Husky, the interest on subordinated shareholders' loans and dividends on Class C shares are ''treated as loans for the 'ceiling' test under the full cost method of accounting applicable to the oil and gas industry.'' Respondent provides a brief summary of the ceiling test as a ''calculation to determine if it is necessary to expense any portion of capitalized costs taking into account future revenues and all costs, including financing, but excluding the subordinated interest and Class C shares.'' Respondent argues that its auditors, in Note 6 of Husky's Consolidated Financial Statements and Auditors' Report, dated December 31, 1997 (''financial statements'') ''determined that the loans were so subordinated that they could not be treated as debt'' and that these ''loans are subordinated to all senior debt and other financial debt of the Company.''

Petitioner argues that the Department properly included interest on subordinated shareholders' loans and dividends on Class C shares as interest expenses, since Husky's exclusion of these payments improperly understated its financial expense ratio.

First, petitioner argues that Husky did not address the fact that the *Cost Verification Report* notes that company officials stated that ''these account balances (*i.e.,* the interest on subordinated shareholders' loans and dividends on Class C shares) reflect the interest expense due to shareholders for lending the organization funds.'' Petitioner argues that the Department relied on this statement from company officials in determining that these amounts should be included in the calculation of interest expense. Additionally, petitioner notes that the *Cost Verification Report* states that Husky officials identified the following three characteristics of these shareholders' loans: (1) each shareholder charges the same fixed interest rate; (2) Husky accrues the interest expense even if the entity has an operating loss; and (3) the accrued expense is not a dividend.

Second, petitioner argues that Department practice is to ''include interest on loans from owners or shareholders in the calculation of a respondent's financial expense ratio used to calculate COP/CV'' (citing *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695, 13704–05 (April 17, 1992) (''*Kiwifruit from New Zealand*''); and *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings)* and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19077 (May 3, 1989) (''*Antifriction Bearings from Germany*'')). Also, petitioner argues that when a respondent's financial statements ''classify the holdings as debt rather than equity, the Department includes the amounts paid on the holdings in the calculation of the financial expense ratio,'' citing *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019, 7039 (February 6, 1995) (''*Roses from Ecuador*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from Taiwan,* 62 FR 1726, 1731 (January 13, 1997) (''*Melamine Institutional Dinnerware Products from Taiwan*'').

Third, petitioner argues that Note Six of respondent's financial statement does not state that the subordinated shareholders' loans and dividends on Class C are not debt. Also, petitioner addresses how respondent's subordinated shareholders' loans and dividends on Class C shares are represented in Husky's financial statement. Because this discussion involves proprietary information, please see *Analysis Memo: Final* for a full discussion of this issue.

Fourth, petitioner argues that respondent's statement that ''the holdings [subordinated shareholders' loans and dividends on Class C shares] are not treated like normal debt under Canadian GAAP,'' in fact acknowledges that the holdings are debt. Also, petitioner notes that under both the statute and the Statement of Administrative Action (''SAA''), COP/CV cannot be calculated using foreign accounting practices that ''do not reasonably reflect the costs of producing the subject merchandise.'' In addition, petitioner argues that the CIT has ''made [it] clear that even if a respondent's accounting records are consistent with the respondent's home country GAAP, it is unlawful for the Department to rely on those records when they are unreliable and distortive of 'actual costs' '' (citing *Thai Pineapple Pub. Co. v. United States,* 946 F. Supp. 11, 20 (Ct. Int'l Trade 1996)). Petitioner argues that the Department has determined that COP/CV must reasonably reflect actual production costs, citing, *e.g., Certain Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review,* 62 FR 18486, 18492 (April 15, 1997), and *Final Determination of Sales at Less Than Fair Value; Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29559 (June 5, 1995). Petitioner notes that the ''SAA identifies U.S. GAAP as the standard for determining whether a company's records reflect actual costs.'' Also, petitioner notes how respondent's subordinated shareholders' loans and dividends on Class C shares may be classified in Husky's financial statement. Because this argument entails the discussion of proprietary information, *see Analysis Memo: Final* (proprietary version).

Department's Position: We disagree with respondent's characterization of the interest on subordinated shareholders' loans and dividends on Class C shares. As petitioner notes above, and as mentioned in the *Cost Verification Report,* Husky officials identified the following three characteristics of these shareholders' loans: (1) each shareholder charges the same fixed interest rate; (2) Husky accrues the interest expense even if the entity has an operating loss; and (3) the accrued expense is not a dividend. These three characteristic descriptions, as well as the statement that the account balances of shareholder loans reflect the interest expense due to shareholders for loaning the organization funds, suggest that these are interest expenses for Husky.

Furthermore, we note that Husky's auditors appear to have implicitly characterized the subordinated shareholders' loan amounts as debt, by stating that these ''loans are subordinated to all senior debt and other financial debt of the Company.'' *See Cost Verification Report,* Exhibit 2 (Husky's Consolidated Financial Statements and Auditors' Report, dated December 31, 1997, Note Six). The loans, while subordinated to other debt, are still identified as debt because they have a specific maturity date and require the payment of interest (Note 12 of the same financial report). Additionally, we agree with petitioner's argument regarding how the subordinated shareholders' loans and dividends on Class C shares are represented in Husky's financial statements. Because this discussion involves proprietary information, *see Analysis Memo: Final* (proprietary version) for a full discussion of this issue.

We agree with petitioner that the Department's practice is to include interest on loans from owners or shareholders when calculating a respondent's financial expense ratio. *See, e.g., Kiwifruit from New Zealand* (Department agreed with petitioners that any interest expenses that were necessary to produce kiwifruit should properly be included in the cost of production, since there was no evidence that the interest rate on the related-party loan did not reflect market interest rates.); and *Antifriction Bearings from Germany* (Department stated that the loan to respondent from a shareholder does not differ from other debt. Therefore, the interest paid on that loan was treated as an interest expense.).

In addition, if a respondent's financial statements classify the owners' or shareholders' holdings as a debt or loan, rather than as equity, Department practice is to include the payments on these holdings in the calculation of respondent's financial expense ratio. *See Roses from Ecuador* (Department noted that since the loan in question was not recorded originally as an equity investment and was reflected in the company's books and records as borrowings, we had no basis to reclassify it as equity.) and *Melamine Institutional Dinnerware Products from Taiwan* (Department stated that although respondent may have considered the transactions in question to serve as equity capital infusions, its audited financial statement classified them as long-term loans. Other than respondent's assertions, there was no basis on the record to reclassify these amounts.).

Finally, as stated in section 773(f)(1)(A) of the Act, the Department normally relies on foreign company's books and records for calculating COP/CV if these practices are: (1) consistent with their home country GAAP, and (2) reasonably reflect the costs associated with the production and sale of the merchandise. Due to the economic realities of these loans, Canadian GAAP has required the company to treat these loans as a note payable. Thus, the interest expense incurred on this debt should be reflected in the cost of production as any other interest expense.

Based on our analysis above, we continue to find that these payments by Husky are properly classified as interest expenses in the calculation of its financial expense ratio.

Final Results of Review

As a result of our review of the comments received, we determine that the following margin exists:

Manufacturer/Exporter	Time Period	Margin (percent)
Husky Oil, Ltd. ..	12/01/96–11/30/97	0.37

Because the final calculated margin is *de minimis*, the Department will instruct the U.S. Customs Service to liquidate entries of subject merchandise during the POR without regard to antidumping duties.

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except that if the rate is *de minimis, i.e.*, less than 0.5 percent, no cash deposit rate 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, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1993/94 administrative review of these orders (*see Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review*, 62 FR 37970 (July 15, 1997) (1992/93 and 1993/94 Final Results)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1), that continues to govern business proprietary information in this segment of the proceeding. 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17801 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Antidumping Duty Administrative Reviews of Heavy Forged Hand Tools from the People's Republic of China

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

ACTION: Notice of extension of time limit for final results of reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative reviews of the antidumping duty orders on Heavy Forged Hand Tools from the People's Republic of China. These reviews cover five manufacturers/exporters of the subject merchandise to the United States for the period February 1, 1997 to January 31, 1998.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement, Office 4, Group II, Import Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW Washington, DC 20230, telephone: (202)–482–3601, or (202)–482–3965, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of these reviews within the initial time limit established by the