EFFECTIVE DATE: October 15, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Wendy Frankel, Office of AD/CVD Enforcement, Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5346 or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, 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, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR part 353 (April 1997).

Amended Final Results

On March 13, 1997, the Department published the final results of its administrative reviews of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (PRC) (62 FR 11813). These reviews cover five manufacturers/exporters and the period of review (POR) is February 1, 1996, through January 31, 1997.

After publication of our final results, we received timely allegations from two respondents, Shandong Machinery Import & Export Corporation (SMC) and Tianjin Machinery Import & Export Corporation (TMC), that we had made ministerial errors in our calculations for the final results. We also received timely rebuttal comments from O. Ames Co. (the petitioner). In particular, SMC alleged that the Department erroneously used the finished weight of another class of merchandise in the ocean freight calculations for two transactions involving the importation of hammers into the United States. Based on our analysis of the ministerial error allegations, we agree with SMC and, therefore, in accordance with 19 CFR 353.28, we have made a change to the final margin calculations only with regard to these sales. For a detailed discussion of the Department's analysis of the ministerial error allegations, see the Memorandum to Holly A. Kuga from the HFHTs Team, Analysis of Allegations of Ministerial Errors, dated August 21, 1998.

On September 16, 1998, the Court of International Trade granted the Department leave to correct the ministerial error pertaining to ocean freight charges. Pursuant to the Court's order, we are amending the final results of the antidumping duty administrative review of HFHTs from the PRC with regard to SMC. SMC's revised final weighted-average dumping margin is as follows:

Manufacturer/Exporter	Margin (percent)
Shandong Machinery Import & Export Corporation (SMC): (Hammers/Sledges)	6.02

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. We will direct Customs to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (62 FR 11813, 11819) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 353.28(c).

Dated: October 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–27884 Filed 10–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand.

SUMMARY: In response to a request by Saha Thai Steel Pipe Company, Ltd. (''Saha Thai''), and its affiliated exporter S.A.F. Pipe Export Co., Ltd., (''SAF''), and two importers, Ferro Union Inc. (''Ferro Union''), and ASOMA Corp. (''ASOMA''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers the following manufacturer/exporter of the subject merchandise to the United States: Saha Thai/SAF. The period of review (POR) is March 1, 1996 through February 29, 1997. We received comments on the preliminary results and rebuttal comments from the petitioners and respondent.

Based on our analysis of comments received, we have calculated a margin for Saha Thai. The final weighted-average dumping margins are listed below in the section entitled Final Results of Review.

EFFECTIVE DATE: October 16, 1998.

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1374 or (202) 482–3362, respectively.

Applicable Statute

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 (hereinafter, ''the Act'') by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296, May 19,

1997) (''Final Regulations''), do not govern this administrative review, citations to those regulations are provided, where appropriate, as a statement of current Departmental practice.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 7, 1997, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1996 through February 28, 1997 (62 FR 10521). A timely request for an administrative review of the antidumping order with respect to sales by Saha Thai/SAF during the POR was filed jointly by Saha Thai, SAF, Ferro Union, and ASOMA. The Department published a notice of initiation of this antidumping duty administrative review on April 24, 1997 (62 FR 19988). On May 14, 1997, certain domestic producers of standard pipe products entered an appearance in this review: Allied Tube & Conduit Corporation, Sawhill Tubular Division—Armco, Inc., Wheatland Tube Company, and Laclede Steel Company, (''petitioners'' or ''domestic interested parties'').

Because the Department determined that it was not practicable to complete this review within statutory time limits, on November 19, 1997, we published in the **Federal Register** our notice of extension of time limits for this review (62 FR 61802) pursuant to section 751(a)(3)(A) of the Act. On April 7, 1998, the Department published in the **Federal Register** (63 FR 16974) the preliminary results of its administrative review of this antidumping order covering the period March 1, 1996 through February 28, 1997. The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this administrative review are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive. This review covers sales of these products by Saha Thai/SAF during the period March 1, 1996 through February 28, 1997.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by the respondent Saha Thai from March 2–6, 1997, using standard verification procedures, including examination of relevant financial records and analysis of original documentation used by Saha Thai to prepare responses to requests for information from the Department. We also verified sales and level of trade issues at one of Saha Thai's affiliated home market resellers. Our verification results are outlined in the public version of the verification report (Memorandum to Roland L. MacDonald from John B. Totaro and Dorothy A. Woster, March 19, 1998 (''Saha Thai Verification Report'').

Analysis of Comments Received

Saha Thai, SAF, Ferro Union, and ASOMA (collectively ''Saha Thai'') and the petitioners submitted case briefs on May 22, 1998, and rebuttal briefs on June 1, 1998.

Comment 1

Saha Thai argues that the Department correctly found that Saha Thai is jointly controlled by more than one person, but incorrectly found that Somchai Lamatipanont individually controls Saha Thai. Saha Thai states that in view of Mr. Lamatipanont's limited role in Saha Thai, there is no basis upon which to find that he is either ''legally or operationally in a position to exercise restraint or direction'' over Saha Thai. Citing to a commentator on Securities and Exchange Commission rules, Saha Thai advocates a definition of control based on identifying who ''calls the day-to-day shots'' in the company. A.A. Sommer, Jr., ''Who's 'In Control'—SEC,'' 21 Bus. Law 559, 582 (1966). Saha Thai argues that the Department's discussions with Saha Thai's officers at verification showed that Saha Thai, a closely held corporation, operates through a consensus of its owners and operators. Saha Thai claims that the company is controlled ''jointly'' by a control group consisting of either the entire board acting together or a majority of the board; thus, no single individual, particularly Somchai Lamatipanont, can be said to control Saha Thai. Saha Thai asserts that only the board can exercise restraint or direction over the company.

Petitioners respond that the opinions of a particular commentator on the definition of control in the context of securities law are irrelevant to the application of the antidumping statute. Petitioners note that the statute requires that a person be ''legally or operationally in a position to exercise restraint or direction'' for control to exist. Moreover, petitioners refer to the statement in the Preamble to the Final Regulations that the analysis of whether a person is in a position to exercise restraint or direction ''focuses on the relationships that have the potential to impact decisions concerning production, pricing or cost. . . . the ability to exercise 'control' rather than the actuality of control over specific decisions.'' 62 FR at 27297–98. Petitioners contrast this definition of control with that proffered by Saha Thai—whether a person ''calls the day-to-day shots''—which focuses on the actuality of control instead of the potential to impact decisions. Petitioners state that Saha Thai's definition of control promotes the idea that only a person or persons who can compel a vote of the majority of the stock or board seats can exercise control, and that this idea is contrary to the statute, the SAA, and the regulations. Petitioners conclude that all of Saha Thai's arguments regarding control were considered and rejected by the Department in the preliminary results.

Petitioners also reject Saha Thai's argument that Somchai Lamatipanont is not ''in control'' of Saha Thai. First, Petitioners state that Somchai Lamatipanont's role in the company is substantial and meets the statutory test for control. Second, petitioners argue that the fact that the board of directors may be deemed to be in control of Saha Thai does not preclude a finding that Somchai Lamatipanont, or other individuals, may also be in a position to exercise restraint and direction over Saha Thai. Petitioners state that the Department correctly recognized in the preliminary results that multiple persons of varying degrees of control may individually and jointly control a company for purposes of the statute. Petitioners claim that Saha Thai's own description of its corporate structure supports this finding. Petitioners argue that within that type of structure, the Deputy Managing Director, Somchai Lamatipanont, would have the potential to impact decisions concerning production, pricing or cost, which meets the Department's definition of control as

stated in the Preamble to the Final Regulations. Petitioners conclude that the Department correctly determined that Somchai Lamatipanont controls Saha Thai within the meaning of section 771(33).

Department's Position

We find Saha Thai's concept of ''control'' inconsistent with the statute. Section 771(33) of the Act states that ''control'' exists where one person ''is legally or operationally in a position to exercise restraint or direction'' over another person. This definition is stated in terms of the ability to restrain or direct a company's operations. As explained in the Preamble to the Proposed Regulations and reiterated in the Final Regulations, the Department need not find evidence of actual control to satisfy this statutory definition. Proposed Rule, 61 FR at 7310, 7311; Final Regulations, 62 FR at 29298.

The control test advocated by Saha Thai defines control in terms of actual direction of a company's operations. However, this argument is similar to several comments rejected by the Department in the Preamble to the Final Regulations. For example, the Preamble states:

> [i]n general we agree with the suggestion that we focus on relationships that have the potential to impact decisions concerning production, pricing or cost. This does not mean however, that proof is required that a relationship *in fact has had such an impact.* In this regard, section 771(33), which refers to a person being ''*in a position* to exercise restraint or direction,'' properly focuses the Department on the *ability* to exercise ''control'' rather than the actuality of control over specific decisions. Therefore, we will consider the full range of criteria identified in the SAA, at 838, in determining whether ''control'' exists. (emphasis added).

62 FR 27297–98. The Department declined to adopt the suggestion that the Department define ''legal or operational control'' under section 771(33)(F) of the Act as the ''enforceable ability to compel or restrain commercial actions.'' *Id.* at 27298. Thus, we agree with petitioners that the definition of control proposed by Saha Thai is inconsistent with the antidumping statute and the Department's regulations. Although this more narrow application may be appropriate for the securities laws, the definition contained in the antidumping statute is consistent with Congress' intent to expand the category of business relationships examined for purposes of the Department's antidumping analysis.

We also disagree with Saha Thai's assertion that Somchai Lamatipanont does not control Saha Thai within the meaning of section 771(33)(F). As discussed above, consistent with the statute and regulations, the Department's control analysis properly examines the ability or potential to restrain or direct a company's operations. As we stated in the preliminary results, the facts on the record establish that Somchai Lamatipanont is one of the nine members of Saha Thai's board of directors, and has held this position for at least the last ten years. July 30, 1997 QR at 2. Further, as Deputy Managing Director, Mr. Lamatipanont (1) assists the Managing Director in ensuring that decisions made are executed in accordance with the Managing Director's instructions, (2) acts for the Managing Director with respect to administrative matters when Managing Director is out of the office, and (3) is responsible for significant issues involving day-to-day operations and management decisions in consultation with the Managing Director. October 31, 1997 QR at 2. These responsibilities place Somchai Lamatipanont in a position to exercise restraint or direction over Saha Thai's operations, particularly with respect to pricing and production decisions.

Our conclusion is not altered by Saha Thai's argument that, because Saha Thai operates through a consensus of its owners and operators, no individual can be said to control Saha Thai without a majority of the remainder of the group. Neither the statute nor the legislative history expressly limits the definition of control to a single person. The definition of ''control'' is based solely on the ability to direct or restrain operations. Therefore, multiple persons or groups may be in control, individually and jointly, of a single entity, each having the ability to direct or restrain the company's activities. Based on this analysis, we confirm our preliminary finding that the Lamatipanont family, through its equity interest and a family member's position as a director and senior executive officer of Saha Thai, controls Saha Thai within the meaning of section 771(33)(F).

Comment 2

Saha Thai disputes the Department's finding under section 771(33)(F) of the Act that Saha Thai is affiliated with two Thai producers of the subject merchandise, Thai Hong Steel Pipe Import Export Co., Ltd. (''Thai Hong'') and Thai Tube Co., Ltd. (''Thai Tube''). Saha Thai argues that the Department erred in finding common control of these producers by the Lamatipanont family because, according to Saha Thai, there is no such family group who possesses the power of common control over these producers. Saha Thai argues that besides Somchai Lamatipanont, the other Lamatipanont family members own small percentages of Saha Thai stock and have no role in Saha Thai. In addition, Saha Thai notes that Somchai Lamatipanont does not own any shares in Thai Tube or Thai Hong and is not involved with either company.

Saha Thai argues that it had no commercial transactions with Thai Hong or Thai Tube and does not share officers, directors, employees, information, or facilities with these companies. Saha Thai states that the three producers never supplied each other with production materials or finished products, never provided loans or capital, and never discussed their common industry and/or markets in spite of the Lamatipanont family's involvement in each. Saha Thai adds that, based on the supplier lists obtained at verification, the reseller identified as Company B in the **Federal Register** notice of the preliminary results (owned and controlled by Somchai Lamatipanont and his son, Worawut) did not purchase pipe from either Thai Hong or Thai Tube.

Saha Thai concludes that the Saha Thai stock owned by Somchai Lamatipanont's brother, Samarn, and Samarn's family (shareholders, officers and directors in Thai Tube and Thai Hong) is the only link between Saha Thai and Thai Hong and Thai Tube, and that this connection does not amount to evidence of a family group. Saha Thai asserts that the Department based its preliminary finding of a family group on a shared last name as opposed to record evidence. Saha Thai continues that the Department's finding that a significant potential for manipulation of price and production does not exist between these companies casts doubt on the Department's conclusion that the Lamatipanont family members constitute a family control group. Saha Thai argues that the ''Somchai Lamatipanont branch'' of the family should be recognized as operating distinctly from and without involvement by the ''Samarn-Thai Hong/Thai Tube branch'' of the Lamatipanont family.

Saha Thai argues that by considering the Lamatipanonts a ''family group,'' the Department has ''collapsed'' these individuals under section 771(33)(A) of the Act. Saha Thai argues that this is incorrect because nephews and in-laws are not affiliated under the section 771(33)(A) definition of the types of family members that can be considered affiliates. Thus, according to Saha Thai, there is no affiliation under section

771(33)(A) between Somchai Lamatipanont and his nephew and in-laws involved in Thai Tube and Thai Hong. Even if the Department finds that the members of the Lamatipanont family are affiliated under section 771(33)(A), Saha Thai argues that based on the record evidence the Department should not collapse these individuals into a single family control group for purposes of the antidumping law.

Petitioners agree with the Department's preliminary determination that the Lamatipanont family constitutes a family group who controls Saha Thai, Thai Hong, and Thai Tube. To support their argument, the petitioners refer to elements of the Department's preliminary results collapsing analysis. The petitioners argue that, contrary to Saha Thai's claim, the Department did not find that there was no potential for manipulation, but that there was not a ''significant'' potential for manipulation. Petitioners emphasize that the focus of the Department's collapsing analysis is on the potential for sharing information and cooperation, not on the structure of ownership interest. Petitioners state that in the preliminary results, the Department found every element for collapsing present other than evidence of intertwined operations; petitioners note that actual evidence of intertwined operations is not required to find significant potential for manipulation. Petitioners continue that finding actual evidence of cooperation between Saha Thai and Thai Hong and Thai Tube would have been nearly impossible, and the Department was unable to verify such cooperation, because (1) Saha Thai chose not to provide relevant information, (2) Saha Thai's responses are not reliable, and (3) Thai Hong and Thai Tube refused to participate in this review.

Furthermore, petitioners argue that the record evidence does support the conclusion that a significant potential for price and production manipulation exists. Petitioners cite *Collated Roofing Nails from Taiwan*, in which the Department found that persons in ''positions of legal and operational control in their respective companies [can] create a significant potential for price or production manipulation.'' 62 FR 51427, 51436 (Oct. 1, 1997) (emphasis added). Petitioners assert that family members can be expected to act in concert when doing so is in their common interests. Petitioners add that the Department has not improperly adopted a presumption that family members necessarily act in concert because such cooperation between family members is not required to find affiliation under the statute. Because the statute defines family members as affiliated persons, it is reasonable to presume that they will cooperate with one another. Petitioners continue that the Department reasonably interpreted the statute to find that a person is affiliated with the children of his brother. Petitioners conclude that the Department correctly found that Saha Thai is affiliated with Thai Hong and Thai Tube in the preliminary results, and should find the same in the final results.

Department's Position

We disagree with Saha Thai's argument that we improperly examined the Lamatipanont family as a control group for purposes of our affiliation analysis under section 771(33)(F) of the Act. Section 351.102(b) of the Final Regulations provides that, in determining whether control exists for the purpose of finding affiliation, the Department will consider, among other things, corporate or family groupings, franchise or joint-venture agreements, debt financing, and close supplier relationships. 62 FR at 27380. The directive in the regulations that the Department consider family groupings in examining affiliation recognizes that control may be exerted through familial holdings and corporate positions. It is therefore reasonable to examine familial control in the aggregate to ensure that prices and costs used in the dumping calculation reflect market value, and are not influenced by familial relationships, and that the appropriate methodology is employed (*e.g.*, affiliated producers are collapsed where warranted). *See e.g.*, *Queen's Flowers de Colombia* v. *United States*, F.Supp. 617, 626 (CIT 1997).

The facts on the record demonstrate that several families are each involved in the ownership and management of Saha Thai. Four of these families also own and control at least one other Thai company that produces and/or sells the subject merchandise. Throughout its questionnaire responses, Saha Thai refers to ''six family groups with ownership interests in Saha Thai.'' *See, e.g.*, October 31, 1997 QR at 9. Each family owns a significant minority of Saha Thai's shares. Each of these six stockholding families holds at least one seat on Saha Thai's nine-member Board of Directors (together they hold all of the nine board seats in Saha Thai), and members of the four families with the largest equity interests also serve as the senior executive officers in Saha Thai: Chairman of the Board (Ampapankit), Managing Director (Karuchit/Kunanantakul), Deputy Managing Director (Lamatipanont), and Financial Director (Sae Haeng/Ratanasirivilai). The facts on the record demonstrate that Saha Thai's ownership and management structure is family-oriented, and that within this structure, these families are legally or operationally in a position, jointly and severally, to control Saha Thai within the meaning of section 771(33) of the Act.

The Department's analysis in this case follows current practice by evaluating all indicia of control by the family, not just stock ownership. For instance, in an analysis of affiliation based on common control by a family group, the Department explained:

> The legislative history of the URAA makes it clear that the statute does not require majority ownership for a finding of control. Even a minority shareholder interest, examined within the context of the totality of other evidence of control, can be a factor that we consider in determining whether one party is operationally in a position to control another.

Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 18486, 18490 (April 15, 1997). In the most recently completed segment of this proceeding, the Department noted the breadth of the term ''control'' under section 771(33) of the Act: ''the statutory definition of control encompasses both legal and operational control. Multiple persons or groups may be in control, individually and jointly, of a single entity, *i.e.*, each has the ability to direct or restrain the company's activities.'' *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Administrative Review*, 62 FR 53808 at 53815 (October 16, 1997).

Our finding that Saha Thai is affiliated under section 771(33)(F) of the Act with Thai Tube and Thai Hong by virtue of common control by the Lamatipanont family is based on record evidence that this family is one of the control groups within Saha Thai. Our analysis of the Lamatipanont family's control is consistent with the statute, regulations and current practice.

We disagree with Saha Thai's assertion that we should consider the Lamatipanonts as two separate branches of the same family who operate independently of each other. In its questionnaire responses and case briefs, Saha Thai does not deny that Somchai Lamatipanont, the center of one alleged branch of the family, is the brother of Samarn Lamatipanont, the center of the second alleged branch of the family. These brothers, their wives, and their children are owners, directors and managers of three producers of standard pipe: Saha Thai, Thai Hong and Thai Tube. Where members of the same

family hold interests and management positions in several companies in the same industry, it is reasonable to examine the interests of the family as a whole for purposes of determining where common control exists. *See Queen's Flowers* 981 F.Supp. at 626.

Saha Thai misconstrues our analysis by claiming that we improperly collapsed the Lamatipanont family members under section771(33)(A) of the Act. We did not rely on this provision for purposes of aggregating the interests of the Lamatipanont family members. Rather, we made reference to this subsection merely as further support for considering familial holdings in our affiliation analysis, *i.e.,* the fact that family members are affiliated, confirms the reasonableness of examining control by family groups. We, therefore, find it reasonable to examine the interests of the Lamatipanont family as a whole in steel pipe businesses.

Moreover, in determining the existence of a ''corporate or family grouping'' for purposes of affiliation, the Department is not required to find, as Saha Thai suggests, the existence of a ''control group acting in concert.'' Drawing such a bright line test ignores the focus of the statute and the regulations on the ability of a person to exert restraint or direction over a company in determining ''control'' for purposes of affiliation. The Department is equally concerned with a control group which has the potential to act in concert or act out of common interest.

Finally, Saha Thai's arguments that it had no commercial transactions and does not share officers, directors, employees, information or facilities with Thai Hong or Thai Tube to support its argument that the Lamatipanont family does not control these producers is unpersuasive. These factors are relevant to a collapsing analysis but are not determinative of control within the meaning of section 771(33) of the Act. (See *Department's Position* in response to Comment 3.) For the purpose of examining the existence of common control, we examined indicia of control, such as the ownership interests, board of directors seats and management positions held by members of the Lamatipanont family in Saha Thai, Thai Hong, and Thai Tube. Analysis of these facts led us to conclude that these three producers of the subject merchandise are affiliated because they are under the common control of the Lamatipanont family within the meaning of section 771(33)(F) of the Act. Our conclusion is unchanged for the final results.

Comment 3

Petitioners argue that the Department incorrectly found in the preliminary results that Saha Thai and Thai Tube and Thai Hong should not be collapsed because there is no evidence of intertwined operations. Petitioners argue that while evidence of actual price and production manipulation is not present on the record, the Department in its regulations explicitly rejected the need for a showing of actual manipulation in favor of finding a significant potential for manipulation. Petitioners also argue that there is significant potential for manipulation of price and production where affiliation is based on control under section 771(33) of the Act. Petitioners contend that whenever a person or group of people are legally or operationally in a position to exercise restraint or direction over two entities, there is a significant potential for manipulation of price and production. Petitioners cite *Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review,* 62 FR 51427, 51436 (Sept. 10, 1997), as a case where the Department found that it was ''immaterial'' that two collapsed entities were operated as separate entities, and that there may be overlap between the evidence used to find affiliation based on control and the evidence used to determine the appropriateness of collapsing. Petitioners then cite *Collated Roofing Nails From Taiwan; Final Determination of Sales at Less Than Fair Value,* 62 FR 51427, 51436 (Oct. 1, 1997), as support for the proposition that significant potential for manipulation of price or production can be created by a person or a group of persons in positions of legal and operational control in their respective companies.

Petitioners argue that the Department's preliminary affiliation analysis regarding the Lamatipanont family's ownership, management and access to marketing, sales and production data support the existence of a significant potential for price and production manipulation. Petitioners note that the Department found that Saha Thai's competition policy on its own does not rebut the potential for manipulation of prices and production. Petitioners note that the focus of the Department's regulations on this issue is the potential for manipulation, and argue that requiring a showing of actual intertwined operations undercuts this focus of the regulations.

Petitioners also argue that Saha Thai has frustrated the Department's attempts to gain information on Thai Tube and Thai Hong, and that the record contains numerous instances where Saha Thai refused to provide basic information. Petitioners continue that the Department should hold Saha Thai responsible if the record contains inconclusive evidence of intertwined operations between Saha Thai and Thai Tube and Thai Hong. Petitioners conclude that the Department should collapse these three companies for the final results.

Saha Thai responds that there is no basis on which Thai Tube and Thai Hong can be collapsed with Saha Thai, particularly because Saha Thai had no commercial or other transactions with these companies, and in fact had a twelve-year-old company policy prohibiting such transactions. Saha Thai states that petitioners' arguments that these companies should be collapsed are irrelevant and ludicrous. Saha Thai concludes that the Department should affirm its decision not to collapse Saha Thai and Thai Tube.

Department's Position

A finding of affiliation has been and continues to be a necessary, but not determinative, criterion in deciding whether to ''collapse'' two or more companies, *i.e.,* treat them as a single entity for margin calculation purposes. For example, the Department may find two companies affiliated on the basis of an equity interest and then consider the *level* of that interest in deciding whether to collapse the affiliated parties. One producer's equity interest of ten percent of another would result in treating two companies as affiliated, but absent other factors may be insufficient to warrant collapsing them. Similarly, a finding of control results in treating companies as affiliated. However, it is appropriate to consider the level of control in deciding whether to collapse those companies. The existence of some degree of control alone is not necessarily determinative of the collapsing question. In short, affiliation alone is not a sufficient basis to collapse. See Preamble to the Final Regulations, 62 FR at 27345.

In the preliminary results, we found Saha Thai affiliated with Thai Tube and Thai Hong under section 771(33)(F) of the Act by virtue of common control by the Lamatipanont family. We then applied our collapsing analysis, using factors set forth in the Final Regulations at § 351.401(f), to determine whether these two producers should be collapsed with Saha Thai for purposes of calculating dumping margins. Although each producer is affiliated with Saha Thai and each company produces subject merchandise, we

concluded that the record evidence did not support a finding of significant potential for manipulation of pricing or production. Therefore, we did not collapse Saha Thai with either Thai Tube or Thai Hong. *See Memo to File from John Totaro,* March 30, 1998. We continue to find that collapsing Saha Thai with these producers is inappropriate in this review.

Although we agree with the petitioners' assertion that evidence of actual manipulation is not a prerequisite to finding a significant potential for manipulation, the record evidence must demonstrate a ''significant potential'' for such manipulation to justify treating affiliated producers as a single entity. We also agree that each factor set forth as a relevant indicator to determine whether a significant potential for manipulation exists need not be met in each case. Rather, as explained in the Preamble to the Final Regulations, this is a non-exhaustive list of factors which the Department considers in determining whether to collapse affiliated producers. *Id.* In practice, where factors such as substantial transactions, shared distributors, or interlocking boards or management indicate a significant potential for manipulation, the Department has treated separate entities as one. *See Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42853 (Aug. 19, 1996); *Cut to Length Carbon Steel Plate from Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47436, 47437 (Sept. 9, 1997) and *Certain Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review,* 62 FR 12744, 12749 (March 16, 1998); *Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review,* 62 FR 47632, 47638–39 (Sept. 10, 1997).

In this instance, we found the factors indicating a potential for manipulation insufficient to collapse Saha Thai and Thai Tube and Thai Hong. While the Lamatipanont family exercises some control over each of these entities, it is only one of several groups that jointly and severally control Saha Thai. There is little overlap between the boards and management of Saha Thai and the other two producers. While the Lamatipanont family holds all the board seats and high management positions in Thai Tube and Thai Hong, another member of the family holds only one of nine board seats and the Deputy Managing Director position in Saha Thai. Moreover, there are no commercial transactions or other evidence of intertwined operations between Saha Thai and either Thai Hong or Thai Tube. Petitioners claim that there is some evidence on the record of intertwined operations, but we cannot conclude from the evidence to which petitioners refer that Saha Thai's operations are intertwined with Thai Hong or Thai Tube. (Due to the proprietary nature of this information, details of our analysis are contained in the proprietary version of the Memorandum to File from John Totaro, dated October 5, 1998.) Thus, the facts presented in this review are similar to those in Chilean salmon, where the Department did not collapse two companies because it found no evidence to suggest a significant possibility of price or production manipulation. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, 31421 (June 9, 1998).

We do not consider our finding of the Lamatipanont family's ownership and control, by itself, as a sufficient basis to collapse these affiliates. As discussed above, the Lamatipanont family is a significant but minority owner of Saha Thai, and multiple entities are in control of Saha Thai. In *Standard Pipes from India,* Commerce recognized that there may be overlap in the evidence establishing affiliation by control and our collapsing analysis, but the evidence relied on in our collapsing analysis goes beyond that which is necessary to find common control. For example, in *Standard Pipes from India,* the two affiliated producers shared four members of their boards of directors out of a total of seven directors for one company and nine directors for the other. 62 FR at 51438. In addition, the same individuals held the top management positions in both producers. *Id.* Similarly, in *Collated Roofing Nails from Taiwan,* the family members who owned and controlled the affiliated producers also had significant ties to both companies. The chairman of one producer was the past general manager and current advisor to the second producer, where his son was the current general manager. Each family member had substantial responsibility for the sales and production decisions of their respective companies, which facilitated the sharing of employees and the transferring of sales between the two. *See Collated Roofing Nails from Taiwan,* 62 FR at 51436.

In the present case, the level of control and the absence of evidence of intertwined operations leads us to conclude the collapsing is not warranted. This determination does not reflect a heightened evidentiary standard, as petitioners suggest. Rather, it is consistent with the Department's practice of not collapsing producers solely on the basis of affiliation. *See* Preamble to the Final Regulations, 62 FR at 27345.

Saha Thai provided sufficient information for the Department to make a collapsing information. Therefore, despite that fact that Thai Tube and Thai Hong refused to provide information, the use of facts available was unnecessary. We note, however, that we will continue to examine the appropriateness of collapsing these affiliated producers in future reviews. Therefore, continued lack of participation from these companies may result in the application of facts available.

Comment 4

Saha Thai argues that the Department failed to undertake the requisite statutory and regulatory analysis of the Siam Steel Group companies in reaching its conclusion that those companies are affiliated on the basis of common control by the Karuchit/Kunanantakul family. Saha Thai argues that because Saha Thai is controlled by a group other than the Karuchit/Kunanantakul family, Saha Thai cannot be affiliated with Siam Matsushita [1] or any other Siam Steel Group company by means of common control under section 771(33)(F) by the Karuchit/Kunanantakul family. Saha Thai asserts that the Karuchit/Kunanantakul family does not control Saha Thai and that major company decisions require board approval. Further, Saha Thai argues that the Karuchit/Kunanantakul family does not control Siam Matsushita because (1) it held only 39% of Siam Matsushita's shares, (2) Karuchit/Kunanantakul family members held only ceremonial titles in the company, (3) the operational and management roles in Siam Matsushita are held by Japanese individuals, and (4) a majority of the board members are Japanese individuals. Saha Thai concludes that Japanese investors control Siam Matsushita, while the Karuchit/Kunanantakul family is merely the

[1] In its case and rebuttal briefs, Saha Thai referred to Siam Matsushita Steel Co., Ltd. as ''Company E,'' the name used by the Department to refer to this company in the preliminary results because Saha Thai requested for business proprietary treatment of this company's name. However, Saha Thai has referred to this company on the public record of this review, for example, at page 2 and Exhibit A of its December 31, 1997 questionnaire response (public version), Exhibit 2 of its October 31, 1997 questionnaire response (public version). Therefore, the company's identity is no longer proprietary.

company's local conduit into the Thai market.

Saha Thai contends that the Department's conclusions in the preliminary results regarding the influence of Siam Steel International on the manufacturing policies and product selection of the Siam Steel Group companies were not supported by the record. Saha Thai claims that the reference to the Siam Steel Group name is for public relations purposes only and there is no legal entity known as the Siam Steel Group. Saha Thai contends that the Karuchit/Kunanantakul family holds only minority interests in the Siam Steel Group companies and exerts no managerial control in the series of joint ventures that comprise these entities. Saha Thai asserts that the Karuchit/Kunanantakul family does not have the ability to direct the production decisions of the Siam Steel Group members because that control rests with Japanese investors.

Second, Saha Thai argues that the Department correctly decided to not collapse Saha Thai and Siam Matsushita for the preliminary results because of the substantial retooling needed to shift production from Saha Thai to Siam Matsushita. In addition, Saha Thai argues that the record does not contain evidence of any potential for the manipulation of price or production between these companies. Saha Thai references the company policy adopted twelve years ago that prohibits certain kinds of cooperation, and its statement in its October 31, 1997, questionnaire response that none of the operations of Saha Thai and Siam Matsushita were intertwined. Saha Thai asserts that neither company was performing any part of the other's production processes, nor were they sharing designs. Moreover, except for Siam Matsushita's extremely small-quantity purchases from Saha Thai, Saha Thai claims there were no commercial interactions between Saha Thai and Siam Matsushita.

Finally, Saha Thai states that it provided information concerning Saha Thai's relationship to and interactions with many other companies in response to the Department's questions. Saha Thai claims that it made overtures to the Department concerning the need to include meetings with Siam Matsushita or visits to the company as part of its verification, but that the Department did not request any additional information. Saha Thai urges the Department to affirm its preliminary results decision to not collapse Saha Thai and Siam Matsushita.

Petitioners agree with the Department's conclusion in the preliminary results that the facts on the record establish that Saha Thai is affiliated within the meaning of section 771(33)(F) with Siam Matsushita. However, petitioners argue that the Department should collapse Saha Thai and Siam Matsushita for the final results. Petitioners disagree with the Department's preliminary analysis, in which the Department concluded that the substantial retooling criterion of the collapsing analysis is not satisfied.

Petitioners argue that the record does not contain sufficient information on Siam Matsushita's PVC-lined pipe production process to determine whether it produces this pipe at full capacity or whether it has excess capacity to devote to the production of the subject merchandise. Also, petitioners contend that the record does not contain information on the capacity of Siam Matsushita's pipe mill relative to Saha Thai's, or its galvanizing facilities and PVC-coating equipment. Petitioners argue that, absent this record evidence, the Department's conclusion that Siam Matsushita would have to significantly alter its manufacturing process is flawed.

Petitioners also disagree with the Department's conclusion that allowing a portion of production facilities to stand idle constitutes a substantial retooling of Siam Matsushita's facility. Petitioners contend that retooling requires the addition of new equipment or modification of existing equipment, not merely the lack of use of existing equipment. Petitioners contend that, unlike the circumstances in *Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496 (July 30, 1997), no infrastructure changes would be necessary for Siam Matsushita to produce the subject merchandise because Siam Matsushita produces standard pipe as an intermediate product. Further, petitioners argue that the record establishes that Siam Matsushita has break points in its process after pipe production for galvanizing and PVC coating that allow it to use portions of its facilities without engaging other portions of its facilities. Petitioners conclude that the record evidence supports the fact that Siam Matsushita could produce standard pipe identical to that produced by Saha Thai without substantial retooling of its production facilities.

Furthermore, petitioners note that the Department's preliminary analysis did not address the third collapsing criterion contained in section 351.401(f)(1) of the Final Regulations, *i.e.*, significant potential for price or production manipulation. However, petitioners argue that the facts which support the Department's preliminary finding that Saha Thai and Siam Matsushita are affiliated by means of common control by the Karuchit/Kunanantakul family and membership in the Siam Steel Group also support this collapsing factor. Petitioners argue that family ownership and control under section 771(33) necessarily constitutes a significant potential for manipulation, *citing Collated Roofing Nails from Taiwan*, 62 FR at 51436. Petitioners also note that the Department need not find that this factor exists, but must find that, based on the totality of circumstances, the two companies are sufficiently related to warrant treatment as a single entity, *citing Certain Welded Carbon Standard Steel Pipes and Tubes from India*, 62 FR at 47638.

Petitioners claim the Department's preliminary findings regarding the Siam Steel Group indicate at least some degree of common involvement by the group in pricing decisions of the two companies. However, petitioners state that additional information about the intertwined nature of Saha Thai's and Siam Matsushita's operations is not available because Saha Thai did not make such information available. Petitioners claim these are essentially the same circumstances that led the Department to apply adverse facts available to Saha Thai in the last review.

Department's Position

We disagree with Saha Thai's assertions that it is not affiliated with Siam Matsushita under the Act. Section 351.102(b) of the Final Regulations provides that, in determining whether control exists for the purpose of finding affiliation, the Department will consider, among other things, corporate or family groupings, franchise or joint-venture agreements, debt financing, and close supplier relationships. The facts on the record demonstrate that the Siam Steel Group is a grouping of Thai entities involved in the steel industry which is owned and managed by the Karuchit/Kunanantakul family. Although these companies may operate independently of each other, they are nonetheless subject to direct or indirect control, within the meaning of section 771(33) of the Act, by the Karuchit/Kunanantakul family.

The record indicates that one of the Siam Steel Group companies, Siam Steel Group International Co., Ltd., (''SSGI''), is the primary organizing body of the Siam Steel Group. SSGI is 98.88 percent owned by members of the Karuchit/Kunanantakul family. October

31, 1997 QR at Exhibit 5. The Siam Steel Group brochure describes SSGI as follows:

> Siam Steel Group International Co., Ltd. was established with an intention to promote and support the operation of affiliated companies in Siam Steel Group together with help in company's expansion and development business of the group to proceed more efficiently. . . .
>
> Apart from a strong purpose to develop technology and local industry in order to compete with other countries, Siam Steel Group have stable policy to continuously help preserving the environment and conserving the nature directly by selection of products that do not harm the nature and strictly control the manufacturing process conformable to technical know-how basis.

June 2, 1997 QR at Exhibit 6. Thus, the Siam Steel Group holds itself out to the public as an organization of affiliated companies, whose expansion and development of business is promoted and supported by SSGI, and who follow, to one degree or another, common policies on manufacturing methods and selection of products to be produced. Further evidence of SSGI's role in the Siam Steel Group companies is the fact that SSGI funded the Siam Steel Group brochure. December 22, 1997 QR at 6. From this record evidence, we conclude that the Siam Steel Group is the type of corporate grouping envisioned by the SAA and the Department's regulations.

The Karuchit/Kunanantakul family, together with Siam Steel International Public Company Ltd.[2], own between 8.17 percent and 100 percent of each of the 26 Siam Steel Group companies, averaging 57.97 percent ownership of each company. The members of the Karuchit/Kunanantakul family are in various positions of legal and/or operational control in each member company through ownership and or management in each company, and through ownership and management of SSGI and Siam Steel International Public Company Ltd.

With respect to Saha Thai in particular, the Karuchit/Kunanantakul family directly or indirectly owns a significant percentage of Saha Thai's stock. This family controls three of the nine seats on Saha Thai's Board of Directors, as well as the Managing Director's position. Saha Thai notes that ''[p]ricing decisions (either in the establishment of a price list or changes to it) are not considered major decisions requiring board approval.'' December 22, 1997 QR at 1. As stated above, pricing decisions are made by the Managing Director, Somchai Karuchit. The significant minority equity interest, seats on the Board of Directors, and the Managing Director's position combine to place the Karuchit/Kunanantakul family in a position of legal and/or operational control of Saha Thai.

Furthermore, the record evidence demonstrates that, of the seven directors of Siam Matsushita, three are Karuchit/Kunanantakul family members. October 31, 1997 QR at Exhibit 2. In addition, the record demonstrates that Wanchai Kunanantakul is the President of Siam Matsushita, Anantachai Kunanantakul is the Personnel and General Affairs Director of Siam Matsushita, and another Karuchit/Kunanantakul family member is the Chairman of Siam Matsushita. *Id.* Saha Thai Case Brief at 29; October 31, 1997 QR at Exhibit 5; *Memorandum to the File from John Totaro,* August 3, 1998.

The record does not support Saha Thai's claim that the titles held by these Karuchit/Kunanantakul family members are merely ceremonial. There is evidence on the record that Siam Matsushita's President, Wanchai Kunanantakul, is one of only two individuals, along with Takashi Ozasa, Siam Matsushita's Vice President, with the power to bind the company with his signature. October 31, 1997 QR at Exhibit 5 and Exhibit 2. Anantachai Kunanantakul's position as Personnel and General Affairs Director of Siam Matsushita suggests substantial involvement in the operation of the company. *Id.* Moreover, given the Chairman's responsibility in Saha Thai, we can infer that the Karuchit/Kunanantakul family member's position as Chairman in Siam Matsushita is equally substantive in nature. Saha Thai has offered no evidence to demonstrate otherwise. Thus, the record evidence supports our determination that the Karuchit/Kunanantakul family controls the members of the Siam Steel Group, particularly Saha Thai and Siam Matsushita. The fact that Japanese investors also have controlling interests in certain Siam Steel Group companies does not detract from this finding because, as discussed above, multiple persons or groups may individually and jointly control the same companies under section 771(33) of the Act. On this basis, we continue to find that Saha Thai and Siam Matsushita are affiliated under section 771(33)(F) of the Act.

However, we do not find that the record evidence supports treating these affiliated companies as a single entity under our collapsing analysis. In the preliminary results, we stated that the record evidence indicates that shifting production to subject merchandise would require extensive and expensive infrastructure changes in Siam Matsushita.

The record establishes that Saha Thai's and Siam Matsushita's production facilities are devoted to manufacturing very different products: Saha Thai produces standard pipe and Siam Matsushita produces PVC-lined pipe. The record demonstrates that Siam Matsushita produces standard pipe as an intermediate product, but also that Siam Matsushita's production process requires substantially more processing to produce its final product, PVC-lined steel pipe. It is therefore reasonable to infer that shifting production to standard pipe would require Siam Matsushita to significantly alter its production process and incur additional costs in shifting production. This determination is consistent with prior cases where the Department did not collapse affiliated producers who produced similar but not comparable products which required different processes and equipment. *See Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42497 (Aug. 7, 1997); *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 42511, 42512 (Aug. 16, 1995) and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 13815 (March 28, 1996).

In reaching this conclusion, we have not adopted the petitioner's view of ''substantial retooling,'' which advocates a finding of substantial retooling only where new equipment is added to the existing production facilities. This concept does not reflect commercial reality because a company may substantially revise its production facilities without adding new equipment. For example, we cannot conclude from the facts on the record that it would not involve significant time and expense for Siam Matsushita to restructure its continuous production process to transform what is now an intermediate product into a finished product. Thus, we do not consider Siam Matsushita's capacity to produce standard pipe as an intermediate product as decisive on the issue of whether substantial retooling would be necessary to shift production to the lower-grade standard pipe produced by Saha Thai.

[2] Siam Steel International Public Company, Ltd. is a Siam Steel Group member, furniture manufacturer, Saha Thai shareholder and Saha Thai customer. The Karuchit/Kunanantakul family owns a controlling (65.33 percent) interest in this company.

Therefore, based on our analysis of the record evidence, we do not find that the facts support collapsing Saha Thai and Siam Matsushita in this review. Because we were able to reach this determination based on the information provided by Saha Thai, application of the facts available rule is unwarranted. We note, however, that we will continue to examine any shift in production between these two affiliates in any subsequent reviews.

Comment 5

Saha Thai argues that it is not affiliated under section 771(33)(F) with the three resellers, because none of the three Saha Thai directors who, with their families, control the resellers also control Saha Thai.

Petitioners reject this argument. Petitioners assert that Saha Thai's interpretation of control is inconsistent with sections 771(33)(B) and 771(33)(E) of the statute and the Department's statements in the Preamble to the Final Regulations that an enforceable ability to compel or restrain certain actions is not a necessary element for finding control under section 771(33) of the Act. Petitioners conclude that the Department should continue to find Saha Thai affiliated with Resellers A, B, and C for the final results.

Department's Position

We disagree with Saha Thai's assertions that it is not affiliated with these resellers identified in the preliminary results. As discussed above in Comment 1, Saha Thai's argument is premised upon an interpretation of ''control'' that is inconsistent with the statute and the regulations. In the preliminary results, we found that Saha Thai was affiliated under section 771(33)(F) of the Act with three home market resellers of the subject merchandise, referred to in the notice of preliminary results as Company A, Company B and Company C. Each of these resellers is entirely owned by one of the six families that jointly and severally control Saha Thai. Each of these families owns a substantial minority interest in Saha Thai, has at least one family member on Saha Thai's board of directors, and has a family member who is an executive officer of Saha Thai. As we explained above, evidence of actual control is not a prerequisite to finding ''control'' within the meaning of section 771(33) of the Act, which defines control in terms of the *ability* of one person to restrain or direct another person. The statutory definition of control encompasses both legal and operational control, and multiple persons or groups may be in control, individually and jointly, of a single entity, each having the ability to direct or restrain the company's activities. Furthermore, among several individuals in a position to control an entity, one individual may possess a greater degree of control than the others. For example, the Managing Director of Saha Thai may have the greatest authority among Saha Thai's executives. However, the Managing Director's superior position would not eliminate the ability of the other officers—the Financial Director, the Deputy Managing Director and the Chairman of the Board—to direct or restrain the company's activities.

We, therefore, conclude that the Sae Haeng/Ratanasirivilai family controls both Saha Thai and Company A, the Lamatipanont family controls both Saha Thai and Company B, and the Ampapankit family controls both Saha Thai and Company C. Our position on this issue remains unchanged for the final results.

Comment 6

Petitioners argue that the Department has no choice but to apply the facts available under 19 U.S.C. §§ 1677e and 1677m (section 776(a) and (b) of the Act) because the record contains neither home market and U.S. sales data nor information on cost of production for Siam Matsushita, Thai Hong, and Thai Tube. Petitioners argue that this information is necessary to perform the dumping analysis. Petitioners state that the record is now so incomplete that it cannot serve as the basis for the final results, and neither Saha Thai nor its affiliates acted to the best of their ability to provide information requested by the Department. Petitioners argue that an adverse inference under 19 U.S.C. 1677e(b) (section 776 (b) of the Act) is appropriate given the outright refusal of Thai Tube and Thai Hong to cooperate. Furthermore, argue petitioners, the record is replete with instances where either Saha Thai did not provide information that was requested or the Department found at verification that Saha Thai had not completely or correctly answered the questionnaires. Petitioners argue that the evidence on the record of this review should be viewed in light of Saha Thai's ''dissembling and prevarication'' in the original investigation and the most recently completed review. In this review, petitioners argue that Saha Thai's submissions, particularly concerning the affiliation and collapsing issues, contains enough unanswered questions, inconsistencies, and proven errors to render the entire response unreliable for the final results.

Petitioners identify two issues in particular that demonstrate Saha Thai's lack of cooperation in this review. First, petitioners cite Saha Thai's alleged inability to produce documents at verification related to its corporate governance, including its memorandum of association, minutes of board meetings, or a record of a company policy decided at a board meeting. Petitioners assert that Saha Thai cannot reasonably claim that such documents do not exist. Second, petitioners note Saha Thai's stated inability to substantiate its claim that major company decisions are made by a 60% vote of the board. Petitioners identify other instances where Saha Thai provided inadequate responses and conclude that Saha Thai has provided less than full disclosure in this case. Petitioners argue that to accept Saha Thai's responses as an adequate basis for the final results would allow Saha Thai to ''control the amount of antidumping duties by selectively providing [the Department] information,'' *citing Olympic Adhesives Inc.,* v. *United States,* 899 F.2d 1565, 1572 (Fed. Cir. 1990). Petitioners contend that the circumstances in this case require the use of adverse facts available, and recommend the 37.55% rate applied to Thai Union in the last review.

Saha Thai responds that none of the alleged inconsistencies identified by petitioners warrants serious consideration by the Department as justification for total adverse facts available. Specifically, Saha Thai addresses petitioners' focus on Saha Thai's lack of ability to provide its memorandum of association and board of directors meetings. Saha Thai argues that the memorandum of association could not be located, and that board meeting minutes were not maintained except in instances where important company policies were established. Saha Thai argues that it has fully cooperated with the Department and provided all requested information. With respect to the requested corporate governance documents, Saha Thai notes that it explained that such documentation does not exist, and therefore, it should not be penalized for its informal governance structure. Saha Thai argues that in circumstances where it is unable to provide information or is never requested to provide information, the application of facts available is inappropriate, *citing Borden, Inc.* v. *United States; Olympic Adhesives; Daewoo Elec. Co.*

Department's Position

Section 776(a) of the Act authorizes the resort to facts available only where necessary information is not available on the record or an interested party withholds information, fails to comply with the Department's reporting requirements, significantly impedes the proceeding, or submits unverifiable information. We have examined Saha Thai's submissions in light of these factors and determine that resort to facts available is inappropriate in this review. Saha Thai was unable to produce certain corporate governance documents because such documents do not exist. Further, the lack of this information did not hinder our ability to reach the necessary determinations concerning its affiliations with other entities.

Further, as noted above, the information submitted by Saha Thai was sufficient to make a determination that Saha Thai, Thai Tube and Thai Hong should not be collapsed. Therefore, responses from Thai Hong and Thai Tube were not necessary for calculating a dumping margin in this review. This consideration applies equally to additional information from Siam Matsushita. We note, however, as discussed in the relevant collapsing analyses, that we will continue to examine these issues in future reviews and the failure of these affiliates to respond may lead to application of the facts available.

In short, the record contains information necessary to complete the review and Saha Thai: (1) Has not withheld information that has been requested by the Department, (2) has submitted responses to the Department's requests timely and in the form requested, (3) did not significantly impede the review, and (4) provided information that was largely verifiable.

Comment 7

Petitioners claim that Saha Thai's questionnaire responses and other data indicate that the contract date should be used as the date of U.S. sales. Petitioners claim that Saha Thai did not provide any of the requested factual information about changes in quantity after the contract date. Instead, petitioners assert that Saha Thai insisted upon using invoice date as the date of sale, claiming that the Department requires invoice date in all or most instances, that the company records sales based on invoice date, and that a change in date of sale methodology from review to review would result in either the double-reporting or omission of certain sales.

Second, petitioners assert that the contract establishes the final agreement of the parties to the sale. Petitioners cite the 1995–1996 review of *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 62 FR 64559 (Dec. 8, 1997) (*Pipe from Korea*), where based on an understanding of the U.S. sales process, in which price and quantity are established at contract date, the Department instructed the respondent to report contract date as the date of sale. Petitioners contend that the Final Regulations allow flexibility in using a date other than the invoice date as date of sale; the appropriate date of sale occurs when the material terms of sale are set. Petitioners assert that Saha Thai has offered both the wrong factual and legal arguments for its choice in date of sale.

According to the petitioners, as a consequence of an incorrect date of sale, (1) a different set of sales will be evaluated, (2) in a country subject to currency devaluation or inflation, the sale's value may be distorted, and (3) incorrect dates lead to incorrect matching, all of which ultimately distorts the antidumping duty margin. Thus, petitioners argue that because Saha Thai did not provide the contract dates as requested, the Department should find in its final results that Saha Thai has significantly impeded the investigation and use the facts available to determine Saha Thai's dumping margin. If the Department does not use facts available, petitioners argue that the U.S. date of sale should be corrected on the basis of non-adverse facts available, *i.e.,* based on the difference between reported contract and invoice dates provided in Saha Thai's questionnaire responses. Petitioners propose an additional method, calculating the interval between the letter of credit date and the invoice date to derive a weighted-average interval for the number of days between contract and invoice.

Saha Thai responds that the Department correctly used invoice date as the date of sale. Saha Thai states that the Department's policy clearly called for the use of invoice date as date of sale, since the invoice date is the date on which the final quantity and price were established. Saha Thai defends its reporting methodology, stating that upon issuance of the questionnaire, Saha Thai contacted the official in charge. Following the methodology set forth in the Final Regulations, Saha Thai used invoice date as the date of sale. Saha Thai notes that the Department's regulations, 351.401(i), express a preference for the use of invoice date as the sale date based on commercial reality. Saha Thai contends that there is no date which better reflects the final terms of sale than the invoice date, the date which, as verified, is recorded in Saha Thai's records maintained in the ordinary course of business. Saha Thai states that only by reference to the invoice can one see the quantities which were the subject of the sale.

Saha Thai distinguishes this review from *Pipe from Korea,* where the exporter's U.S. prices and quantities were seldom revised prior to invoicing. Saha Thai further notes that the decision in the Korean case did not depend on the existence of ''tolerance'' levels in the contracts. Saha Thai also cites *Certain Stainless Steel Wire Rod from India,* 62 FR 38976, 38979 (July 21, 1997), where the Department used invoice date due to changes in quantity between the purchase order date and shipment dates. Finally, Saha Thai argues that the Department uses a date other than invoice date only when there are compelling reasons to deviate from this practice, citing *Cold Rolled and Corrosion Resistant-Carbon Steel Flat Products from Korea,* 63 FR 13170, 13194 (March 18, 1998). Saha Thai asserts that there is no compelling reason in this review to deviate from the Department's standard practice of using invoice date as date of sale.

Moreover, Saha Thai claims that because it accurately reported invoice date as the date of sale, application of facts available is entirely unwarranted. Saha Thai notes that petitioners did not take issue with Saha Thai's assertion that quantity was subject to change from contract to invoice date until the end of this proceeding. Saha Thai also claims that it never once refused to provide information requested by the Department. Saha Thai notes that the Department did not make an absolute and specific demand that Saha Thai report its contract dates. Saha Thai further states that petitioners never suggested that Saha Thai revise its sales listing. Saha Thai claims that moving the sale date this late in the proceeding unfairly penalizes Saha Thai by increasing the possibility that sales will be matched to constructed value. Saha Thai claims that it was fully cooperative with the Department and went to great lengths to provide the information requested, and thus did not impede the Department's investigation.

Department's Position

The Department's current practice, as codified in the Final Regulations at section 351.401(i), is to use invoice date as the date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.,* price and quantity, are

established on a different date. See 19 CFR 351.401(i), 62 FR at 27411; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, 32835–36 (June 16, 1998). In this review, Saha Thai reported invoice date as the date of sale in response to the Department's initial questionnaire. June 2, 1997 QR at 3. To ascertain whether Saha Thai accurately reported the date of sale, we requested additional information concerning whether prices and quantities were fixed on a different date. Saha Thai reported that it generally enters into short-term contracts that establish price but quantities often change and are not finally established in any written document prior to the issuance of the invoice at the time shipment is arranged. July 30, 1997 QR at 18. Saha Thai also stated that the invoice date is recorded in its records kept in the ordinary course of business, whereas dates of contract and related dates are not so maintained. *Id.* at 19.

The Department verified that Saha Thai records sales in its financial records by date of invoice. Verification Report at 17. We also discussed Saha Thai's export sales process with the company's export sales manager. As described in the Verification Report, Saha Thai negotiates price and quantity, a contract is signed and a letter of credit is arranged. At that point, a production order is issued to the mill and delivery department, and the sales invoice is issued just prior to shipping. *Id.* Based on verification and other information on the record, the Department was satisfied that invoice date was the appropriate date of sale for Saha Thai's U.S. sales, and we used this date in the preliminary results.

Petitioners' claim that the contract date fixes prices and quantities is not supported by the record evidence. We examined the sample contract and invoices supplied by Saha Thai, and this information demonstrates that quantities were not fixed in the contract. (Due to the proprietary nature of this information, details of our analysis are contained in the proprietary version of the Memorandum to File from John Totaro, dated October 5, 1998). While we agree with petitioners that changes consistent with the tolerance level established in the contract may establish a binding agreement on quantity at the contract date, our analysis of the sample contract and corresponding invoices reveals that changes frequently were made beyond the agreed upon tolerance levels. Where such changes occur frequently after the contract date, we have relied upon a later date. *See Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 34216, 34227 (June 25, 1997); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review,* 62 FR 48592, 48593 (Sept. 16, 1997). Consistent with this practice, we find that the record evidence in this case supports using invoice date as the date of sale.

The facts in *Pipe from Korea* are distinguishable from those presented in this review. In that case, the Department was satisfied that invoice date was inappropriate because ''the material terms of sale in the U.S. are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur.'' *Pipe from Korea,* 63 FR at 32836. However, as discussed above, we have determined that the record evidence in this case supports Saha Thai's assertions that its contracts do not fix quantity, and that quantity is not established until invoice date. Therefore, given that quantity can and regularly does change between contract date and invoice date, we find that the invoice date better reflects the date on which the essential terms of the sale are established. We also find that Saha Thai accurately reported the appropriate date of sale; therefore, application of facts available is unwarranted.

Comment 8

Petitioners argue that the Department should reduce Saha Thai's claimed duty drawback adjustment using the actual/ theoretical weight conversion. Petitioners state that Saha Thai purchases hot-rolled sheet in coils on an actual weight basis, and that customs duties on its purchases are applied on the same basis. However, the sales of subject merchandise on which duty drawback is granted are made on a theoretical weight basis. Thus, claim petitioners, the drawback received per unit of pipe exported exceeds the duties paid on the coil included in that unit of pipe by the ratio of one minus the actual/ theoretical weight conversion factor. Petitioners cite *Certain Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Administrative Review,* 62 FR 55574, 55577 (Oct. 27, 1997) in support of their argument.

Petitioners argue that as in the first administrative review on standard pipe from Korea, the adjustment for duty drawback for Saha Thai should be reduced by multiplying the drawback amount by the actual/theoretical conversion factor whenever the conversion factor is less than one. Petitioners claim that this will limit the drawback to the duties paid on material actually incorporated into the exported product as required by the statute and precedent.

Saha Thai responds that petitioners' interpretation is incorrect and based on a misrepresentation of the Department's determination in *Certain Welded Non-Alloy Steel pipe from the Republic of Korea.* Saha Thai claims that there is a direct correlation, transaction-by-transaction, between the drawback received and the duties actually paid on the inputs of the exported product. Saha Thai claims that petitioners' reference to the *Korean Pipe* case is erroneous, because in the Korean case respondents received drawback under a fixed rate refund, whereas Saha Thai based drawback on a transaction-by-transaction calculation of duties actually paid on the inputs exported in the finished product. Saha Thai further states that the Department verified that Saha Thai paid the duties for which it received drawback and, with slight modification to certain clerical errors, accurately quantified drawback in its response.

Department's Position

The information on the record indicates that Saha Thai accurately calculated duty drawback based on the amount of duties actually paid and received by Saha Thai. The Department in *Certain Welded Non-Alloy Steel Pipe from the Republic of Korea* examined two different types of duty drawback calculations,

> ''fixed-rate'' duty drawback provision and . . . ''individual-transaction'' duty-drawback provision. We found that, when respondents received duty drawback under the individual-transaction duty drawback provision, companies received duty drawback based on the duties actually paid on the input of the exported product. . . . We also found that companies receiving duty drawback under the fixed-rate provision paid duties on the basis of the actual weight of inputs imported but received drawback on the basis of the theoretical weight of merchandise exported to the United States. Because theoretical weight is generally greater than actual weight, fixed-rate drawback calculated on a theoretical-weight basis is greater than that calculated on an actual-weight basis. Therefore we conclude that the reported duty drawback of respondents who received the drawback under the fixed-rate provision exceeds the duties actually paid.

62 FR 55574 at 55577 (Oct. 27, 1997).

In the instant review, Saha Thai's duty drawback calculation does not resemble the ''fixed-rate'' methodology alluded to by petitioners in the *Korean*

Pipe case, wherein the duty paid on imported coil differed from the duty drawback received on exports incorporating that coil due to quantities calculated on actual versus theoretical weight. We examined the record of this review and have determined that Saha Thai has correctly calculated its duty drawback adjustment because the duty drawback Saha Thai received from Thai customs authorities was equal to, and not in excess of, the amount of duty paid. In its July 30, 1997 supplemental questionnaire response at Exhibit 11–2, Saha Thai submitted the documentation generated by Thai customs which lists Saha Thai's ''Duty Drawback classified by Export Entry,'' indicating the amount of duty drawback paid to Saha Thai for a group of export sales, as well as the ''Duty Drawback Classified by Import Entry,'' indicating the actual duties Saha Thai paid on imports of coil. These documents show that the amount of duties paid by Saha Thai on imported coil equals the amount of duty drawback received by Saha Thai from Thai customs on exports of pipe. Saha Thai allocated this drawback amount over the total quantity of export sales. Thus, we find, based on the facts on the record, that Saha Thai has not overstated its duty drawback claims.

In addition, the Department verified Saha Thai's duty drawback calculation (see Saha Thai Verification Report at 28, and exhibit C6). With the exception of several minor clerical errors noted at verification, the Department was satisfied with Saha Thai's calculations. Therefore for purposes of these final results, the Department will continue to adjust U.S. price by the amount of duty drawback calculated by Saha Thai.

Comment 9

Petitioners claim that the Department made a ministerial error in the preliminary results margin calculation by limiting the price-to-price analysis to sales with entries during the POR. Petitioners argue that while antidumping duties are assessed against entries that were made during the POR, the Department bases margin calculations on sales during the POR, citing *Silicon Metal from Brazil*, 61 FR 46763, 46765 (Sept. 5, 1996).

Saha Thai responds that date filters should be tied to entry date in accordance with standard Department practice. Saha Thai argues that the cases cited by petitioners involve situations where sales in addition to those entered during the POR are included in the database because respondents were unable to tie sales to entries. Saha Thai points out that it was able to tie all sales to entry dates, and reported only sales entered during the POR, as instructed by the Department.

Department's Position

We agree with Saha Thai that the Department correctly calculated the dumping margin using all sales of merchandise entered during the POR. The Department's standard questionnaire instructed Saha Thai to report U.S. sales based on entry date during the POR, and we verified that Saha Thai accurately reported all sales with entry dates during the POR. *See* Saha Thai Verification Report at 21. As the Department stated in a recent case, the Department's preference is to base an administrative review on entries during the period of review. *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Administrative Review*, 63 FR 32833, 32836 (June 16, 1998). *See also Ferrosilicon from Brazil; Final Results of Antidumping Administrative Review*, 62 FR 43504, 43510 (Aug. 14, 1997). As the Department stated in *Korean Pipe*, section 751(a)(2)(A) of the Act states that a dumping calculation should be performed for each entry during the POR. Although the Department's regulations at section 351.213(e) provide some flexibility in this issue, the Department's preference is to review sales based on entry dates unless there are compelling circumstances that warrant a different approach to determining the universe of sales to be examined during a particular review. *See Korean Pipe*, 63 FR at 32836. There is no record evidence of such compelling circumstances in this review. Therefore, we have continued to use sales with entries during the period of review, as reported by Saha Thai, for purposes of these final results.

Comment 10

Saha Thai argues that if the Department continues to include reseller sales in the database, the Department should use the actual reseller sales quantities to calculate normal value. Saha Thai states that the resellers do not identify pipes held in inventory by producer, and thus do not identify the producer of the pipes they sell. The resellers' sales files include all sales of those products sold by Saha Thai to each reseller. In addition, the resellers' monthly average price for each product represents the monthly average price for all producers, including Saha Thai. Saha Thai claims that the replacement of the actual quantities of sales in each month made by each reseller with the Department's calculated simple monthly average of quantities sold by Saha Thai to the resellers has distorted the results of the antidumping calculations. Saha Thai claims that this methodology created the two highest dumping amounts for all U.S. transactions. Saha Thai further claims that the use of actual reseller sales quantities creates no distortion, as the resellers sold the pipe at the same price, regardless of manufacturer.

Petitioners argue that the Department appropriately used average sales quantities sold by Saha Thai to the resellers. Petitioners suggest that the Department's choice to use non-adverse facts available was not arbitrary, as claimed by Saha Thai, but rather the only accurate tabulation of Saha Thai's pipe sales quantities that the Department could verify. Petitioners further state that the average sales quantities chosen by the Department were more, not less, probative of actual conditions, because the Department verified actual sales quantities of Saha Thai pipe. Petitioners note that the Department is accorded ''considerable deference'' in determining what constitutes the appropriate facts available, referring to *Allied-Signal Aerospace Co.* v. *United States*, 996 F 2d 1185 at 1190 (Fed. Cir. 1993).

Department's Position

Because the resellers' sales data did not identify sales by producer, we were unable to segregate the resellers' sales of Saha Thai pipe. As a substitute, we determined a simple average by model of the monthly quantities sold by Saha Thai to the resellers. These simple average quantities were then used to weight average the reseller home market normal value for all reseller sales with the Saha Thai home market sales in order to calculate the normal value. *See Memorandum to File from Dorothy Woster*, March 31, 1998 (preliminary results analysis memorandum).

Saha Thai proposes including the actual quantities of subject pipe sold by the resellers to calculate the margin, but these sales include pipe manufactured by other manufacturers. Using the resellers' complete sales databases would be contrary to the statutory directive that the Department calculate normal value based on sales of foreign like product. *See*, section 773(B)(i) of the Act. The foreign like product is merchandise manufactured by the same person that produced the subject merchandise sold to the United States. *See* section 771(16) of the Act. The statute indicates that, for the purposes of our antidumping analysis, sales of merchandise produced by manufacturers other than the manufacturer of the merchandise sold to the United States are not appropriate

bases for the calculation of normal value.

Therefore, in other cases where a reseller's sales database contains sales of merchandise produced by other manufacturers, the Department used a weighting methodology that permits us to use the sales listing while neutralizing the effect of sales of other producers' merchandise. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 18502, 18503 (Sept. 19, 1995), and *Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Antidumping Duty Administrative Review*, 61 FR 15772 (April 9, 1996); *Stainless Steel Bar from Spain; Final Determination of Sales at Less than Fair Value*, 59 FR 66931, 66936 (Dec. 28, 1994).

Under the circumstances presented in this review, using a weight averaging methodology based on the facts on the record (Saha Thai's verified sales quantities to the resellers, *see* Saha Thai Verification Report at 15 and 16) is a reasonable approach that addresses the intent of the statute that normal value be based on sales of subject merchandise manufactured by the producer of subject merchandise sold to the United States. Therefore, for purposes of these final results, we have continued to use the simple average by model of the monthly quantities sold by Saha Thai to the resellers.

Comment 11

Petitioners argue that interest costs on coil inputs should be treated as a cost of manufacturing, as opposed to G&A costs, in accordance with Saha Thai's internal cost accounting procedures and generally accepted accounting principles in Thailand. Petitioners note that Saha Thai's practice of deducting these interest costs from the cost of coil and transferring them to G&A is consistent with the Department's treatment of these costs in the original investigation and previous reviews. However, petitioners claim that in accordance with an amendment to the statute at section 773(f)(1)(A) of the Act, these interest costs must be treated in the same manner as Saha Thai treats them internally. Petitioners argue that there is a presumption that the Department shall use the respondent's normal cost allocations based on how they are kept in its records, unless they are determined to be unreasonable and distortive of the dumping margin. Moreover, argue petitioners, these interest costs are directly attributable to the acquisition of hot-rolled coil inventories. For these reasons, petitioners contend that interest costs on coil inputs should be treated as a cost of manufacturing.

Saha Thai responds that interest costs on coil inputs should be treated as they always have in this proceeding and according to standard Department practice. Saha Thai claims that the Department treats finance expenses as fungible business expenses, citing *Silicon Metal from Brazil*, 61 FR 46,763, 46,773 (Sept. 5, 1996) and *Tapered Roller Bearings from China*, 62 FR 6189, 6201 (Feb. 11, 1997). Saha Thai contends that such expenses were treated as a general expense of operating the company in previous reviews, and that nothing in the revisions to the antidumping law requires a change. Saha Thai stated that for purposes of the cost questionnaire response it transferred the coil finance costs from the purchases account to its reported selling, general (including financing expense) and administrative expense calculations.

Department's Position

We disagree with petitioners that interest costs on coil inputs should be treated as a cost of manufacturing, as opposed to G&A costs. As we explained in less than fair value determination, the Department considers ''the financing expense of assets, long-term or short-term, to be fungible and, therefore, a general expense of operating the company.'' *Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less than Fair Value*, 51 FR 3384, 3386 (Jan. 27, 1986). *See also Titanium Sponge from Japan; Final Results of Antidumping Administrative Review*, 55 FR 42227 (Oct. 18, 1990). In its July 30, 1997 supplemental questionnaire response at 27, Saha Thai stated that, ''the finance charge is based upon payment terms.'' Saha Thai provided further detail in its October 31, 1997, second supplemental questionnaire response: ''[t]he expense clearly is an interest cost directly associated with Saha Thai's extended accounts payable on purchases of coil. If Saha Thai did not receive financing from its coil suppliers, it would have to borrow from banks to pay them at an earlier date.'' Thus, by incurring these interest costs, Saha Thai made a deliberate decision to delay payment of its payables (in effect borrowing money from its suppliers). Section 773(f)(1)(A) states that costs shall normally be calculated based on the records of the respondent where those records are prepared in accordance with home country GAAP and reasonably reflect the cost of producing the merchandise. While Saha Thai records these types of expenses as cost of manufacturing in its normal books and records which are prepared in accordance with GAAP of Thailand, our longstanding practice has been to treat these types of interest costs as general expenses and we find no basis to alter this approach in these final results. Therefore, the Department will continue to classify these interest costs on coil inputs as a financing expense, and continue to include these costs in our calculation as reported by Saha Thai.

Final Results of the Review

As a result of this review, we have determined that the following weighted-average dumping margin exists for the period March 1, 1996, through February 28, 1997:

Manufacturer/Exporter	Period	Margin (percent)
Saha Thai ..	3/1/96–2/28/97	1.92

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. As a result of this review, we have determined that the importer-specific duty assessments rates are necessary.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipes and tubes from Thailand, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate stated above; (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 these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash

deposit rate for this case will continue to be 15.67 percent, the ''All Others'' rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: October 5, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–27876 Filed 10–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On August 26, 1998 the binational panel issued its decision in the review of the final injury determination made by the Canadian International Trade Tribunal, in the material injury investigation respecting Concrete Panels, Reinforced with Fiberglass Mesh, Originating in or Exported from the United States of America, NAFTA Secretariat File Number CDA–97–1904–01. The panel affirmed the final determination in all respects. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

BACKGROUND: On July 21, 1997 Custom Building Products, Inc. filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final injury determination made by the Canadian International Trade Tribunal, in the material injury investigation respecting Concrete Panels, Reinforced with Fiberglass Mesh, Originating in or Exported from the United States of America. This determination was published in the *Canada Gazette, Part I, Vol. 13, No. 28, page 1957–58* on July 12, 1997. The NAFTA Secretariat assigned Case Number CDA–97–1904–01 to this request. The panel reviewed the complaints, briefs and other documents and heard oral argument in this matter.

PANEL DECISION: The panel affirmed the final determination of the CITT on all five issues raised by the complainants in their briefs.

Dated: August 28, 1998.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 98–27842 Filed 10–15–98; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) on the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of the Evans Subpost, Fort Monmouth, New Jersey

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: The Department of the Army is announcing the Record of Decision (ROD) on the Final Environmental Impact Statement (FEIS) for the disposal and reuse of the Evans Subpost, in accordance with the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended.

ADDRESSES: A copy of the ROD may be obtained by writing to Mrs. Shirley Vance, U.S. Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Vance, U.S. Army Materiel Command, at (703) 617–8172.

SUPPLEMENTARY INFORMATION: Under the Act, the Secretary of the Army has been delegated the authority to dispose of excess real property and facilities located at a military installation being closed and realigned. The Army is required to comply with the National Environmental Policy Act during the process of property disposal and must prepare appropriate analyses of the impacts of disposal and, indirectly, of reuse of the property on the environment. The ROD and the FEIS satisfy requirements of the law to examine the environmental impacts of disposal and reuse of the Evans Subpost, Ft. Monmouth.

The Army has three alternatives to consider: encumbered disposal, unencumbered disposal, and no action (caretaker status). An encumbrance is any Army imposed or legal constraint on the future use or development of the property. Unencumbered disposal would involve transfer or conveyance of the property to be disposed of with fewer Army imposed restrictions on future use. The no action or caretaker status alternative would result in the Army retaining the property indefinitely.

In the ROD, the Army concludes that the FEIS adequately addresses the