

## Background

On June 27, 2007, the Department received petitions concerning imports of LWR from the PRC, Mexico, Turkey, and the Republic of Korea (Korea) filed in proper form by Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (collectively, the petitioners). The Department initiated antidumping duty investigations of LWR from the above-mentioned countries on July 17, 2007. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China*, 72 FR 40274 (July 24, 2007) (*Initiation Notice*). On August 22, 2007, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of LWR from the PRC, Mexico, Turkey, and Korea. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey, Investigation Nos. 701-TA-449 and 731-TA-1118-1121 (Preliminary)*, 72 FR 49310 (August 28, 2007).

On July 18, 2007, the Department requested quantity and value (Q&V) information from the 53 companies that were identified in the petition as potential producers or exporters of LWR from the PRC. *See Exhibit 10, Volume I, of the June 27, 2007, Petition for the Imposition of Antidumping and Countervailing Duties (the petition)*. The Department received timely responses to its Q&V questionnaire from the following 10 companies (three of which were identified in the petition): Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. (ZZPC), Suns International Trading Limited (Suns), Liaoning Cold Forming Sectional Company Limited (Liaoning), Kunshan Lets Win Steel Machinery Co., Ltd. (Lets Win), Wuxi Baishun Steel Pipe Co., Ltd. (Baishun), Guangdong Walsall Steel Pipe Industrial Co., Ltd. (Walsall), Wuxi Worldunion Trading Co., Ltd. (Worldunion), Weifang East Steel Pipe Co., Ltd. (Weifang), Jiangyin Jianye Metal Products Co., Ltd. (Jiangyin), and Dalian Brollo Steel Tubes Ltd. (Dalian).

On August 16, 2007, the Department selected ZZPC and Lets Win as mandatory respondents. *See memorandum regarding "Selection of Respondents in the Antidumping*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-914]

#### **Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China**

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

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube (LWR) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are shown in the "Preliminary Determination" section of this notice.

**EFFECTIVE DATE:** January 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2769 or 482-4406, respectively.

**SUPPLEMENTARY INFORMATION:**

Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China," dated August 16, 2007 (Respondent Selection Memorandum).

The Department received separate-rate applications from ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, Jiangyin, and Dalian. The Department did not receive separate-rate applications from Suns and Liaoning.

On August 17, 2007, the Department issued its antidumping questionnaire to the mandatory respondents. ZZPC and Lets Win submitted timely responses to the Department's questionnaire during September and October 2007. The Department issued supplemental questionnaires to, and received responses from, ZZPC and Lets Win in October, November, and December 2007 and January 2008. The petitioners submitted comments to the Department regarding ZZPC's and Lets Wins' questionnaire and supplemental questionnaire responses, and the separate rates response of Dalian in October and December 2007.

On September 21, 2007, the Department released to interested parties a memorandum which listed potential surrogate countries and invited interested parties to comment on surrogate country and factor value selection. No party responded to the Department's invitation to comment on surrogate country selection. However, in October, November, and December 2007 and January 2008, both the petitioners and the respondents submitted surrogate values, including surrogate financial statements, for use in this investigation. All of the submitted surrogate data are from India.

In August and September 2007, the petitioners and respondents submitted comments to the Department regarding the appropriate model matching criteria.

On November 1, 2007, the petitioners alleged targeted dumping by ZZPC and Lets Win. On December 10, 2007, the Department sent a letter to the petitioners requesting more information regarding both targeted dumping allegations. See Letter from Howard Smith, Program Manager, Office 4, to Petitioners, concerning, "Targeted Dumping Allegation," dated December 10, 2007. On December 17, 2007, the petitioners responded to the Department's December 10th request for additional information. See the "Targeted Dumping" section of this notice for additional information regarding these allegations.

On December 13, 2007, the petitioners requested that the Department make a finding that critical circumstances exist with respect to imports of LWR from the

PRC. The Department issued questionnaires regarding critical circumstances to Lets Win and ZZPC on December 18, 2007. Lets Win and ZZPC submitted their responses to those questionnaires on December 28, 2007, and January 2, 2008. See the "Critical Circumstances" section of this notice for additional information.

#### Period of Investigation

The period of investigation (POI) is October 1, 2006, through March 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, June 2007). See 19 CFR 351.204(b)(1).

#### Scope of the Investigation

The merchandise that is the subject of this investigation is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the investigation is dispositive.

#### Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323, (May 19,

1997) and *Initiation Notice*. The Department received no comments concerning the scope of the LWR antidumping and countervailing duty investigations. Accordingly, we have not made changes to the scope of this investigation.

#### Critical Circumstances

The Department preliminarily finds that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from the PRC-wide entity because, in accordance with section 733(e)(1)(A)(ii) of the Act, importers of LWR produced by the PRC-wide entity knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales. See Memorandum from Abdelali Elouaradia, Director, Office 4, "Preliminary Affirmative Determination of Critical Circumstances, in Part," dated concurrently with this memorandum. In addition, the Department also preliminarily finds that imports from the PRC-wide entity satisfy section 733(e)(1)(B) of Act because these imports were massive during a relatively short period. See *id.*

However, with respect to Lets Win, ZZPC, and the separate-rate companies, the Department does not preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from these companies because the record indicates that imports from these companies were not massive during a relatively short period. See section 733(e)(1)(B) of the Act; see also Memorandum from Abdelali Elouaradia, Director, Office 4, "Preliminary Affirmative Determination of Critical Circumstances, in Part," dated concurrently with this memorandum. Accordingly, for Lets Win, ZZPC, and the separate-rate companies, the statutory requirement imposed by section 733(e)(1)(B) of Act has not been satisfied and, therefore, we preliminarily determine that critical circumstances do not exist for these entities.

#### Targeted Dumping

Pursuant to section 777A(d)(1) of the Act, in calculating dumping margins in investigations the Department normally will compare U.S. prices and normal values using a weighted average-to-average or transaction-to-transaction comparison methodology. However, section 777A(d)(1)(B) of the Act allows the Department to compare transaction-specific export or constructed export prices to weighted-average normal

values if there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time and the Department explains why such differences cannot be taken into account using the weighted average-to-average or transaction-to-transaction methods. See sections 777A(d)(1)(B)(i) and 777A(d)(1)(B)(ii) of the Act. Further, 19 CFR 351.414(f)(1)(i) requires that a determination of targeted dumping be made “through the use of, among other things, standard and appropriate statistical techniques.” The regulations further elaborate that targeted dumping allegations “must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.” See 19 CFR 351.414(f)(3).

On November 1, 2007, the petitioners alleged that Lets Win and ZZPC targeted certain sales of LWR for dumping. Specifically, the petitioners alleged that targeted dumping occurred where the average net price of all of the subject merchandise sold to a particular customer, entered into a particular port, or sold during a specific month, differed by more than two percent from the overall average net price of all of the subject merchandise sold by the respondent during the POI. The petitioners believe the two-percent price difference supports a finding of targeted dumping because: (1) This approach is consistent with the methodology used in the antidumping duty investigation of coated free sheet (CFS) paper from the Republic of South Korea; and (2) LWR is a commodity product sold in a competitive market and, thus, any price difference is critical. See *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007) (*CFS from Korea*) and accompanying Issues and Decision Memorandum at Comment 3; see also *Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey*, Investigation Nos. 701-TA-449 and 731-TA-1118-1121 (Preliminary) USITC Pub. 3941 at 10 (August 2007) (noting that the parties generally agree that LWR is a commodity-like product). Based on the price comparisons described above, the petitioners argue that Lets Win engaged in targeted dumping during a certain time period whereas ZZPC engaged in targeted dumping with respect to certain customers, regions, and time periods.

After reviewing the petitioners’ targeted dumping allegations, the Department determined that the

allegations lacked basic information and support, and informed the petitioners that they failed to: (1) Establish that the two-percent price variation is significant for the LWR market; (2) establish that the price differences are based on purchasers, regions, or time periods rather than other factors (*e.g.*, general price fluctuations in the market, product differences, differences in channels of distribution or quantities purchased); and (3) explain why the average-to-average or transaction-to-transaction comparison methodology cannot take into account the observed price differences. See the Department’s December 10, 2007, letter to the petitioners.

In response to the Department’s December 10, 2007, letter, the petitioners asserted that the ITC has already analyzed the LWR market and found the subject merchandise to be a commodity product. See the petitioners’ December 17, 2007, submission to the Department. The petitioners noted that the only stated reason for accepting a two-percent price variation as evidence of targeted dumping in the CFS paper investigation was the ITC’s finding that CFS paper is a commodity product. According to the petitioners, additional market analysis related to targeted dumping (beyond the ITC’s finding) was not engaged in by the petitioner in CFS paper, nor is such extensive market analysis required by the statute. Thus, the petitioners maintained that the ITC’s findings are more than adequate support for their proposed two-percent benchmark. Moreover, the petitioners argued that price differences in commodity-like products sold to different purchasers or regions or in different time periods can only be captured through an average-to-transaction comparison. Specifically, the petitioners stated that if the Department were to average prices to targeted and non-targeted groups the lower prices in the targeted groups would be offset by the prices in the non-targeted groups.

We have determined that in this case using an average-to-transaction comparison methodology results in the same overall antidumping margin for each of the respondents as using an average-to-average comparison methodology. See memoranda to the File from Jeff Pedersen for each respondent regarding “Dumping Margins Based on an Average-to-Transaction Comparison Methodology.” Thus, the petitioners’ claim that the observed price differences can only be taken into account using an average-to-transaction comparison is not supported by the facts in this case. See *id.*

Therefore, the requirement of section 777A(d)(1)(B)(ii) of the Act that the average-to-average or transaction-to-transaction methodology cannot account for the price differences is not met. See also “*Statement of Administrative Action*,” accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316, (1994) at 843 (SAA) (“{b}efore relying on {the average-to-transaction comparison} methodology, however, Commerce must establish and provide an explanation why it cannot account for such differences through the use of an average-to-average or transaction-to-transaction comparison.”).

Finally, the Department notes that the petitioners failed to adequately respond to the Department’s concerns regarding their targeted dumping allegations. Specifically, the petitioners failed to describe how the LWR market functions and did not adequately explain why a two-percent price difference should be considered to be significant for the “commodity-like product,” LWR, given the characteristics of the LWR market.<sup>1</sup> As provided in the SAA “the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.” See SAA at 843. Moreover, the petitioners failed to address or take into consideration other possible reasons for the observed price differences (*e.g.*, general price fluctuations in the market, product differences (the petitioners did not compare prices of identical merchandise in their analysis), differences in channels of distribution or quantities purchased, *etc.*). Thus, the petitioners did not adequately establish price patterns based on purchasers, regions, or periods of time. We note that in the CFS paper investigation, a number of these other possible reasons for the observed price differences were taken into account by comparing prices for identical merchandise sold at the same level of trade on a month-to-month basis.

Given the foregoing, we find that the petitioners’ allegations do not contain sufficient information to conduct a targeted dumping analysis.

<sup>1</sup> Additionally, it is important to note that in the investigation of CFS paper from the Republic of Korea, rather than adopting a two-percent benchmark in analyzing targeted dumping the Department specifically noted that it “has not adopted any specific percentages suggested by both parties in their contentions regarding the definition of significance.” See *CFS from Korea* and accompanying “Issues and Decision Memorandum” at Comment 3.

### Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (NME) country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, From the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

### Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value (NV) on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries that are at a level of economic development comparable to that of the PRC. See memorandum regarding "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube (Pipe) from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated August 22, 2007 (Policy Memorandum). From among these economically comparable countries, the Department has preliminarily selected India as the surrogate country for this investigation because it determined that: (1) India is a significant producer of merchandise comparable to the subject merchandise and (2) reliable Indian data for valuing the factors of production are readily available. See memorandum regarding "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China:

Selection of a Surrogate Country" dated November 13, 2007.

### Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, Jiangyin, and Dalian provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore are entitled to a separate rate. Suns and Liaoning did not submit separate-rate applications. Accordingly, Suns and Liaoning have not provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control.

The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585

(May 2, 1994) (*Silicon Carbide*). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

### Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589. Information submitted by ZZPC, Lets Win, Baishun, Worldunion, Weifang, and Jiangyin indicates that there are no restrictive stipulations associated with their exporter and/or business licenses; and there are legislative enactments decentralizing control of the companies. Therefore, the Department has preliminarily found a *de jure* absence of government control over these companies' export activities.

Walsall reported that it is wholly foreign-owned by China Pacific Limited (CPL), which is incorporated in the Cayman Islands. CPL is in turn wholly owned by a Hong Kong citizen. Since there is no PRC ownership of Walsall, and we have no evidence indicating that this company is under the control of the PRC, a separate rates analysis is not necessary to determine whether Walsall is independent from government control. See *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001) (finding that no separate rates analysis for Hongfa was necessary because the company was wholly foreign owned), unchanged in the final determination; see also *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999).

The Department determined that Dalian did not make a sale to the United States during the POI and thus should not be considered for a separate rate. See memorandum regarding "Dalian Brollo Steel Tubes Ltd.'s Eligibility for a Separate Rate" dated concurrently with this notice.

### *Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

ZZPC, Lets Win, Baishun, Worldunion, Weifang, and Jiangyin have each provided information indicating that they: (1) Set export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) have autonomy from the government regarding the selection of management; and (4) retain proceeds from sales and make independent decisions regarding the disposition of profits or financing of losses. Therefore, the Department has preliminarily found a *de facto* absence of government control over these companies' export activities.

Based on the foregoing, the Department has preliminarily granted ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, and Jiangyin, separate, company-specific dumping margins. The Department calculated company-specific dumping margins for ZZPC and Lets Win and assigned Baishun, Walsall, Worldunion, Weifang, and Jiangyin a dumping margin equal to the weighted-average of the dumping margins calculated for ZZPC and Lets Win. As noted above, Suns and Liaoning did not submit separate-rate applications. Accordingly, Suns and Liaoning have not provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control.

Therefore, the Department has not preliminarily granted Suns and Liaoning a separate rate.

### **The PRC-Wide Entity**

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.<sup>2</sup> Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

As noted above, the PRC-wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See

<sup>2</sup> The Department received only 10 timely responses to the requests for Q&V information that it sent to the 53 potential exporters identified in the petition, and there is no indication that any of these Q&V questionnaires were rejected or undeliverable.

*Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); see also SAA at 870. Because the PRC-wide entity did not respond to the Department's request for information, the Department has concluded that the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (AFA), information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 21, 2000) at the "Facts Available" section. Here, we assigned the PRC-wide entity the dumping margin calculated for ZZPC, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. We do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information.<sup>3</sup> The PRC-wide dumping margin applies to all entries of the merchandise under investigation except for entries of subject merchandise from ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, and Jiangyin.

<sup>3</sup> Section 776(c) of the Act requires the Department to corroborate secondary information which the SAA describes as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See also SAA at 870.

## Fair Value Comparisons

To determine whether ZZPC or Lets Win sold LWR to the United States at LTFV, we compared the weighted-average export price (EP) of the LWR to the NV of the LWR, as described in the "U.S. Price," and "NV" sections of this notice.

## U.S. Price

### EP

In accordance with section 772(a) of the Act, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. During the POI, Lets Win made certain sales of subject merchandise to the United States through an unaffiliated trading company located in the PRC. Lets Win claims that it established all of the essential terms of such U.S. sales through its negotiations with the first unaffiliated U.S. customers.<sup>4</sup> Based on Lets Win's claims, the Department has determined that Lets Win's reportable sales should include the PRC trading company's sales of subject merchandise that were arranged and negotiated by Lets Win (using the price charged to the U.S. customer as the starting gross price for calculating EP). See *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades*), and accompanying Issues and Decision Memorandum at Comment 17 (the Department concluded that the seller was the party that negotiated and executed all of the essential terms of sale). ZZPC reported that it made sales of subject merchandise to an unaffiliated PRC trading company with knowledge that the merchandise was destined for the United States. However, unlike Lets Win, ZZPC reported that the unaffiliated trading company directly and independently negotiated the terms of the sales with U.S. customers.<sup>5</sup> In light of ZZPC's claims, and the fact that the Department ignores transactions between companies in an NME country, we have not considered these sales through the unaffiliated PRC trading company in our analysis because they are not ZZPC's reportable sales. This approach is consistent with that taken in the investigation of diamond

sawblades from the PRC. See *Diamond Saw Blades; see also Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 2 noting that " \* \* \* the knowledge test applies only to exporters that have dealings with entities outside of the NME country. In an NME situation, the Department ignores transactions between producers and exporters that are both in-country, since we will not base export price on internal transactions between two companies located in the NME country").

In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (RMB). If market economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. If market economy service providers, who were paid in a market economy currency, provided movement services for less than 33 percent of subject merchandise shipments, by volume, we calculated the movement expenses by weight-averaging surrogate values with the actual price charged by the service provider. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006). For details regarding our EP calculation, see analysis memoranda for ZZPC and Lets Win dated concurrently with this notice.

### NV

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by the respondents to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country,

India. In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. We derived the average unit value of the factor from Indian import statistics. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (WPI) as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value and*

<sup>4</sup> See Lets Win's November 6, 2007, supplemental response at C-1 through C-8 and SA-8.

<sup>5</sup> See ZZPC's December 17, 2007, supplemental response at 5 through 8.

*Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004).<sup>6</sup> Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued raw materials and packing materials using Indian import statistics, except as noted below.

We valued electricity using rates from *Key World Energy Statistics 2003*, published by the International Energy Agency. Because these data were not contemporaneous with the POI, we inflated the values using the WPI. See the memoranda regarding "Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Surrogate Values Selected" for ZZPC and Lets Win dated concurrently with this notice (Factor Value Memoranda).

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies on 2004 data. This wage rate can currently be found on the Department's Web site on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by ZZPC and Lets Win. See Factor Value Memoranda.

We valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midcindia.org>) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we inflated the rate using the WPI. See Factor Value Memoranda.

We valued truck freight expenses using a per-unit average rate from data obtained from the Web site of an Indian

transportation company, InFreight Technologies India Limited. See <http://www.infreight.com/>. This average rate was used by the Department in the antidumping duty administrative review of *Saccharin from the People's Republic of China: Preliminary Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 25247 (May 4, 2007). Because this value is not contemporaneous with the POI, we inflated the rate using the WPI. See Factor Value Memoranda.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in two antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India and those reported by Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India. See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006).

Because the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI. See Factor Value Memoranda.

ZZPC reported that all of its U.S. sales had international freight arranged by an NME freight forwarder. We valued international freight expenses using U.S. dollar freight quotes that the Department obtained from Maersk Sealand (Maersk), a market-economy shipper. We obtained quotes from Maersk for shipments from the PRC port of export and the U.S. port of import reported by ZZPC for its U.S. sales. Because these data were not contemporaneous to the POI, we adjusted them for inflation using the U.S. WPI. See Factor Value Memoranda.

We valued factory overhead, selling, general, and administrative (SG&A) expenses, and profit, using the 2006-2007 audited financial statements of Zenith Birla (India) Limited and Bihar Tubes Limited. Record evidence

indicates that these are Indian companies that produce subject merchandise. We did not rely upon a third company's financial statement that was placed on the record, namely the financial statement of Bhawani Industries Limited (Bhawani), because Bhawani's financial statement lists a "DEPB Premium" in "Other Income." India's DEPB Scheme has been found by the Department to provide a countervailable subsidy. See, e.g., *Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 64 FR 61592 (November 12, 1999) (unchanged in final results); see also <http://ia.ita.doc.gov/esel/eselframes.html>. In *Crawfish from the PRC*, the Department noted that where it has reason to believe or suspect that a company may have received subsidies, financial ratios derived from that company's financial statements do not constitute the best available information with which to value financial ratios. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1. Given the record information regarding Bhawani's use of the DEPB program, and the fact that we have other acceptable financial statements to use as surrogates, consistent with the Department's decision in *Crawfish from the PRC*, we have not used Bhawani's financial data in our surrogate ratio calculations. See Factor Value Memoranda.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

#### Combination Rates

In the *Initiation Notice*, the Department stated that it would

<sup>6</sup>In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>. *Policy Bulletin 05.1*, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See *Policy Bulletin 05.1*, "Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries."

#### Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter & producer	Weighted-average Margin (percent)
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd..	264.64
Kunshan Lets Win Steel Machinery Co., Ltd..	223.52
Wuxi Baishun Steel Pipe Co., Ltd..	247.75
Guangdong Walsall Steel Pipe Industrial Co., Ltd..	247.75
Wuxi Worldunion Trading Co., Ltd..	247.75
Weifang East Steel Pipe Co., Ltd..	247.75
Jiangyin Jianye Metal Products Co., Ltd..	247.75
PRC-Wide Rate .....	264.64

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Suspension of Liquidation

As noted above, the Department has found that critical circumstances exist with respect to imports of subject merchandise from the PRC-Wide entity.

Therefore, in accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR from the PRC-Wide entity as described in the "Scope of the Investigation" section of this notice, entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. For the mandatory respondents, Lets Win and ZZPC, and the separate rate applicants, Wuxi Baishun Steel Pipe Co., Ltd., Guangdong Walsall Steel Pipe Industrial Co., Ltd., Wuxi Worldunion Trading Co., Ltd., Weifang East Steel Pipe Co., Ltd., Jiangyin Jianye Metal Products Co., Ltd., we will instruct CBP to suspend liquidation of all entries of LWR from these companies as described in the "Scope of the Investigation" section of this notice, entered, or withdrawn from warehouse, for consumption upon the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of LWR, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. See 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an

opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 27, 2007, and December 10, 2007, Lets Win and ZZPC, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Lets Win and ZZPC requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 23, 2008.

**David M. Spooner,**  
Assistant Secretary for Import Administration.

[FR Doc. E8-1664 Filed 1-29-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-489-815]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Turkey**

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

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube from Turkey is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Accordingly, we will make our final determination not later than 75 days after the signature date of the preliminary determination, in accordance with 19 CFR 351.210.

**EFFECTIVE DATE:** January 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, Tyler Weinholt, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0408, (202) 482-1121, or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On July 24, 2007, the Department initiated the antidumping duty investigation of light-walled rectangular pipe and tube from Turkey. See *Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China*, 72 FR 40274 (July 24, 2007) (*Initiation Notice*). The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments. See *Initiation Notice*, 72 FR 40274, (July 24,

2007). No party submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (the Commission) preliminarily determined there is a reasonable indication that imports of light-walled rectangular pipe and tube from the People's Republic of China, Korea, Mexico and Turkey are materially injuring the U.S. industry and notified the Department of its findings. See *Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Case Numbers. 701-TA-449 (Preliminary) and 731-TA-1118-1121 (Preliminary)*, 72 FR 49310, (August 28, 2007).

On October 19, 2007, the petitioners requested the Department postpone the preliminary determination by 50 days. The Department published an extension notice on November 14, 2007, which set the new deadline for the preliminary determination at January 23, 2008. See *Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 72 FR 64044, (November 14, 2007).

Section 777A(c)(1) of the Tariff Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of light-walled rectangular pipe and tube from Turkey and determined it was not practicable to examine each known producer or exporter of the subject merchandise, as provided in section 777A(c)(1) of the Tariff Act. On July 31, 2007, we sent quantity and value (Q&V) questionnaires to the following seventeen companies identified in the petition or through our own research: Anadolu Boru, Ayata Metal Industry, Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Goktas Tube, Guven Boru Profil Sanayii ve Ticaret Limited Sirketi, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret, Noksel Steel Pipe Co., MMZ Onur Boru Profil Uretim San. ve Tic. A.S., Ozborsan Boru San. ve Tic. A.S., Ozgur Boru, Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Seamless Steel Tube and Pipe Co. (Celbor), Toscelik Profil ve Sac End. A.S., Umran Steel Pipe Inc., Yusan Industries, Ltd., and Yucel Boru ve Profil Endustrisi A.S.

The Department did not receive a response to the Q&V questionnaire from the following six companies: Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., and

Yusan Industries, Ltd. Furthermore, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru<sup>1</sup> submitted untimely, improperly filed, or incomplete responses. These nine companies that failed to respond, or provided an improperly filed and/or incomplete response, were given a second opportunity to file, but none of them did so in a timely manner.<sup>2</sup>

Nine other exporters/producers submitted proper responses to the Department's Q&V questionnaire: Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Guven Boru Profil Sanayii ve Ticaret Limited Sirketi, Noksel Steel Pipe Co., MMZ Onur Boru Profil Uretim San. ve Tic. A.S., Ozborsan Boru San. ve Tic. A.S., Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Toscelik Profil ve Sac End. A.S., and Yucel Boru ve Profil Endustrisi A.S. Two respondents—Guven Boru Profil Sanayii ve Ticaret Limited Sirketi (Guven Boru) and MMZ Onur Boru Profil Uretim San. ve Tic. A.S. (MMZ)—accounted for the majority by volume of exports of subject merchandise to the United States during the period of investigation (POI) among those companies that responded to our quantity and value questionnaire. These two respondents accounted for 54 percent of the total exports reported by the responding companies. Pursuant to section 777A(c)(2)(1)(B) of the Tariff Act, we selected these two firms as mandatory respondents. See the September 7, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, entitled "Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from Turkey (A-489-815), Respondent Selection" (Respondent Selection Memorandum).

We issued the antidumping questionnaires to Guven Boru and MMZ on September 7, 2007. The Department received a section A response from MMZ on October 4, 2007. The Department received a section A response from Guven Boru on October 5, 2007. However, the public versions of the Guven Boru response were not properly filed or served upon parties and the business proprietary version was not served to parties in a timely

<sup>1</sup> Ozmak Makina ve Elektrik Sanayi, which has been identified as another name for Ozgur Boru (see Memorandum to the File, "Communication from Ozgur Boru," dated August 22, 2007), submitted a response on behalf of Ozgur Boru. However, it was not filed properly, and has not been made part of the record.

<sup>2</sup> Kerim Celik Mamulleri Imalat ve Ticaret submitted an untimely second response on September 17, 2007, which was not made part of the record.

manner. Furthermore, the sales data Guven Boru submitted with its November 7, 2007, sections B and C responses were not in a useable format. For a complete discussion of these and other deficiencies in Guven Boru's submissions, see "Use of Facts Otherwise Available," *infra*.

Petitioners provided comments on MMZ's section A response on October 16, 2007. On October 23, 2007, the Department issued a supplemental questionnaire to MMZ regarding its section A response. On October 25, 2007, MMZ informed the Department that it was no longer participating in the antidumping proceeding.

#### Period of Investigation

The POI is April 1, 2006, to March 31, 2007.

#### Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.15 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### Model Match

In accordance with section 771(16) of the Tariff Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Turkey during the POI are considered to be foreign like products for purposes of

determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Korea, Mexico, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. Parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Korea and Mexico were also invited to comment on the appropriate model matching methodology. See Letter from Richard Weible, Office Director, AD/CVD Enforcement 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM on August 23, 2007; from the Mexican companies Productos Laminados de Monterrey S.A. de C.V. and Prolamsa USA, Inc. on August 24, 2007, August 27, 2007, and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the petitioners on August 24, 2007. The Department has not made any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We would have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type, whether metallic coated or not, whether painted or not, perimeter, wall thickness and shape. However, because we are basing the margins for the mandatory respondents upon adverse facts available, there was no need to match sales of respondents.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to all companies that failed to respond (or to respond adequately) to the Q&V Questionnaire, and for both mandatory respondents (MMZ and Guven Boru). As noted in the Supplementary Information section above, the former failed to provide adequate responses to the Department's Q&V questionnaire and to the Department's follow-up letter of August 16, 2007, while the mandatory respondents failed to cooperate in this investigation.

Section 776(a)(2) of the Tariff Act provides that if an interested party withholds information requested by the

administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Tariff Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Tariff Act provides that if the administering authority determines a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Tariff Act states further the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, the nine non-responding or improperly responding companies all failed to provide such information by the deadlines for submission of the information and/or in the form or manner requested. Thus, for these companies in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin on facts otherwise available.

#### MMZ

MMZ, one of the mandatory respondents, did not provide the information we requested necessary to calculate an antidumping margin for the preliminary determination. Specifically, MMZ failed to provide a complete response to our questionnaire, thereby withholding, among other things, home-market and U.S. sales information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Tariff Act. On October 25, 2007, MMZ informed the Department that it was no longer participating in the antidumping proceeding. See Letter from MMZ, "Request for Withdrawal of MMZ Onur Boru Profil Uretim San. Tic. A.S. ("MMZ") in the Anti-Dumping Investigation of Light Walled Rectangular Pipes from Turkey," dated

October 25, 2007. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for MMZ on facts otherwise available.

#### *Guven Boru*

Guven Boru, the other mandatory respondent, failed to provide complete, timely, and properly filed responses to several of the Department's questionnaires. The Department received the initial section A response from Guven Boru on October 5, 2007. However, the public versions of the Guven Boru response were not properly filed or served upon parties and the business proprietary version was not served to parties in a timely manner. The public version submitted was not labeled "public version," as required by 19 CFR 351.303. Also, Guven Boru served on the petitioners a public version which differed from the public version submitted to the Department, where the bracketed proprietary information was not redacted on the Department's versions. Further, petitioners indicated, and Guven Boru later confirmed, that the company did not serve a copy of the business proprietary version of this response to the petitioners under administrative protective order (APO), as required. See Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown," dated December 27, 2007. See also Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru," dated October 23, 2007, at Exhibit 1, page 3. Finally, Guven Boru filed a certificate of service with its business proprietary submissions which was inaccurate, because it indicated that copies of the business proprietary version of the response were served on the parties on the public service list. Because of improper labeling of proprietary information, the Department had petitioners return the October 5, 2007, submission on October 15, 2007.

On October 15, 2007, the Department contacted Mr. Kemal Tureyen of Guven Boru by electronic mail asking that Guven Boru re-submit the public version of its response and serve the business proprietary and public versions of the response on the petitioners and pointing out Guven Boru's filing and service obligations, specifically Guven Boru's obligation to

serve business proprietary versions of documents to those parties who have access to such information under APO, including counsel for petitioners. See Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru," dated October 23, 2007, at Exhibit 1, page 2. On October 18, 2007, the Department received Guven Boru's corrected public version of its section A response. In its response, Guven Boru reported it had no sales of the foreign like product in the home market, and would be reporting sales to its three largest third-country export markets instead.

On October 19, 2007, Mr. Tureyen sent an e-mail to the case analyst claiming Guven Boru had sent both a business proprietary and public version of its section A response to the petitioners. *Id.* at page 4. In an October 23, 2007, e-mail, Mr. Tureyen explained the company had sent both a public and proprietary version of its section A response "by post" on October 16, 2007, or eleven days after the initial filing with the Department. *Id.* at page 5. However, because petitioners indicated they still had not received the response (see Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Michael Brown," dated December 27, 2007), on October 23, 2007, the case analyst sent an e-mail to Mr. Tureyen suggesting Guven Boru re-send the business proprietary and public versions of its section A response to petitioners as quickly as possible. See Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru," dated October 23, 2007, at page 5. On October 26, 2007, counsel for the petitioners indicated he had received the corrected public version of Guven Boru's section A response, but had not received the business proprietary version. See Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Michael Brown," dated December 27, 2007. On October 30, 2007, counsel for petitioners informed the case analyst by telephone that petitioners had received the business proprietary version of Guven

Boru's section A response, which was originally due to the Department October 5, 2007. *Id.*

We received sections B and C responses from Guven Boru on November 7, 2007. However, Guven Boru's sales databases were not submitted in a useable format. On November 9, 2007, the case analyst sent Mr. Tureyen an e-mail asking him to confirm what versions of Guven Boru's section B and C questionnaire response had been served on the petitioners. See Memorandum from Tyler Weinholt to the File, dated November 9, 2007, at Exhibit 1, page 6. On November 12, 2007, in response to an e-mail from the case analyst, Guven Boru explained that it had sent a public version of the sections B and C response to petitioners.

On November 13, 2007, the Department issued its first supplemental questionnaire regarding Guven Boru's section A response and its section B and C sales database. On November 19, 2007, in response to our first sections A, B, and C supplemental questionnaire, we received revised sections B and C databases from Guven Boru. On November 19, 2007, petitioners informed the Department by telephone that they had received a public version of Guven Boru's section B and C response, but no business proprietary version. See Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown," dated December 27, 2007.

On November 26, 2007, petitioners again informed the Department by telephone that they had received one public version of Guven Boru's November 8, 2007 section B and C response, no business proprietary version, and no public or proprietary copies of the corrected section B and C databases submitted November 19, 2007. See Memorandum from Tyler Weinholt to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown," dated December 27, 2007. On November 26, 2007, we set a letter to Guven Boru reminding the company of its obligation to comply with the Department's filing and service regulations. On November 27, 2007, Mr. Tureyen sent an e-mail to the case analyst explaining that Guven Boru had not sent business proprietary versions of the company's section B and C responses to the petitioners, and stated it was unable to serve the petitioners the original section B and C sales databases because company officials had deleted

them. See Memorandum from Tyler Weinhold to the file, dated December 19, 2007, at exhibit 1, page 1. In doing so, Guven Boru had denied petitioners the opportunity to comment on the data contained in its original sales database. On November 28, 2007, we issued our second supplemental questionnaire to Guven Boru, which included questions regarding certain possible affiliations (our second section A supplemental questionnaire).

On November 29, 2007, we set a letter to Guven Boru giving the company a deadline by which to bring itself into compliance with the Department's filing and service regulations and warning it that further untimely or improperly filed submissions would not be accepted. On December 3, 2007, we issued our third supplemental questionnaire to Guven Boru (our second sections B and C supplemental questionnaire). Also, on December 3, 2007, Guven Boru failed to respond in a timely fashion to the our first section A supplemental questionnaire. Guven Boru's response was received the next day, on December 4, 2007.

In a telephone conversation on December 6, 2007, counsel for petitioners explained that petitioners had received a copy of the narrative portion of Guven Boru's business proprietary section B and C response and a copy of the November 19, 2007, section B and C sales database submission. See Memorandum from Tyler Weinhold to the File, "Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes From Turkey, Telephone Conversations with Mr. Mike Brown," dated December 27, 2007. Therefore, Guven Boru had denied petitioners the opportunity to comment on the proprietary version of its section B and C response until nearly one month after those documents were due to the Department. On December 12, 2007, we issued our fourth supplemental questionnaire to Guven Boru, regarding certain possible sales in the home market (our third section A supplemental questionnaire). Guven Boru failed to provide a timely response to our second section A supplemental questionnaire, which was due December 13, 2007. On December 13, 2007, Guven Boru also submitted a request for an extension for its response to our second section B and C supplemental questionnaire, which was due December 13, 2007. We denied this request for additional time. See letter to Guven Boru, dated December 21, 2007.

On December 17, 2007, the petitioners submitted a sales-below cost allegation for Guven Boru. See Letter from Schagrin Associates, dated December

17, 2007. Also, on December 17, 2007, Guven Boru attempted to submit an untimely-filed response to our second section A supplemental questionnaire, which was due December 13, 2007. In addition, Guven Boru failed to file its response to the our second sections B and C supplemental questionnaire, which was due on December 17, 2007. On December 19, 2007, we received an untimely request for an extension for our second sections B and C supplemental questionnaire. Finally, on December 20, 2007, Guven Boru failed to respond to the December 12, 2007 section A supplemental questionnaire.

On December 21, 2007, we sent a letter to Guven Boru, rejecting its response to the second section A supplemental questionnaire, which was due December 13, 2007, and its request for an extension for the our second sections B and C supplemental questionnaire because these documents were untimely filed. In that letter, we also informed Guven Boru that we would not accept any further submissions and would use facts otherwise available in making our preliminary determination.

Guven Boru failed to respond in a timely manner to the our November 13, 2007, section A supplemental questionnaire and our second section A supplemental questionnaire and failed to respond entirely to the our December 3, 2007, sections B and C supplemental questionnaire and our December 12, 2007, section A supplemental questionnaire. Further, Guven Boru's untimely filings represented a continuance of a pattern of untimely and improperly filed submissions. Moreover, Guven Boru's failure on two occasions to timely serve petitioners with proprietary versions of its responses until weeks after those responses were due prevented the petitioners from meaningfully participating in this proceeding. Also, by its own admission, it destroyed its original sales databases prior to serving them on petitioners. Finally, Guven Boru's untimely responses prevented us from conducting a proper analysis within the statutorily imposed time limits of this investigation. For these reasons, in reaching our preliminary determination we have based the dumping margin for Guven Boru on facts otherwise available pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act.

#### *Non-Responding Companies*

As explained above, the Department did not receive a response to the Q&V questionnaire from Anadolu Boru, Ayata Metal Industry, Goktas Tube,

Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., or Yusan Industries, Ltd., and Kalibre Boru Sanayi ve Ticaret A.S., and Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru submitted untimely, improperly-filed, or incomplete responses. Although the Department provided all respondents, including those that did not respond (or did not respond adequately) to the Q&V questionnaire, with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Tariff Act, these companies did not respond as requested. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., or Yusan Industries, Ltd., and Kalibre Boru Sanayi ve Ticaret A.S., and Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru on facts otherwise available.

#### **Application of Adverse Inferences for Facts Available**

According to section 776(b) of the Tariff Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See, e.g., *Certain Polyester Staple Fiber From Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, December 10, 2007. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (Nippon). See also, *Certain Polyester Staple Fiber from Korea: Final Results of*

*the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

Although the Department provided all respondents, including those that did not respond (or did not respond adequately) to the Q&V questionnaire, with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Tariff Act, these companies did not respond as requested. With respect to MMZ and Guven Boru, the former stated it would not continue to participate in the proceeding, and the latter failed to serve petitioners with proprietary versions of its questionnaire responses in a timely fashion, destroyed one sales database before providing it to petitioners, and failed to respond in a timely fashion to four of the Department's supplemental questionnaires. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Tariff Act. Because these companies did not provide the information requested, section 782(e) of the Tariff Act is not applicable.

Based on the above, the Department has preliminarily determined that the companies that failed to respond adequately to the Q&V questionnaire and the two mandatory respondents (MMZ and Guven Boru) failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### **Selection and Corroboration of Information Used as Facts Available**

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Tariff Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary

information and there are no other respondents. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to each uncooperative respondent the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 41.71 percent. *See Initiation Notice* at 40278.

When using facts otherwise available, section 776(c) of the Tariff Act provides that when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.

The SAA clarifies that “corroborate” means the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the

adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist* at pages 9 and 10. *See also Initiation Notice* at 40277. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export-price and normal-value calculations used in the Petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the Petition or in supplements to the Petition that corroborates key elements of the export-price and normal-value calculations used in the Petition to derive estimated margins. *Id.*

The petitioners calculated export price (EP) in two ways: by use of a price quote from a U.S. dealer and by use of the average unit values (AUVs) for import data from the Bureau of the Census IM145 import statistics.

When based on the price quote, the petitioners deducted an amount for international freight, and also a value of three percent of the U.S. price to cover inland freight from the U.S. port to the U. S. dealer, as well as the U.S. dealer's expenses and profit. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 4. The three percent figure is based on an affidavit from a U.S. producer of light-walled rectangular tubing, who stated that three percent is the standard mark-up in the industry. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 1. We then compared the U.S. price quote to the AUVs for this period and confirmed that the value of the U.S. price quote was consistent with the AUVs.

The petitioners also calculated EP based on AUVs. In the Petition of June 27, 2007, the petitioners included figures from January–March of 2006 in their calculation of AUV. *See* Volume II of the Petition at Exhibit I–3. The Department requested that Petitioner recalculate AUVs to exclude the January–March 2006 import figures. Additionally, the Department requested that the Petitioner exclude HTSUS number 7306.69.50.00 from the calculation of AUVs, as this number does not include LWR merchandise that would be subject to the investigation. The petitioners corrected the calculation as requested by the Department. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at pages 5–

6, and at Exhibit 3. The petitioners did not make an adjustment for international freight because they calculated the AUV prices on the FAS value of the merchandise. See Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 3.

U.S. official import statistics (e.g., AUVs from the Bureau of the Census IM145 import statistics) are sources that we consider reliable. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538, 48540 (August 18, 2005), (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the pricing information provided in the petition. Therefore, based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

The petitioners based normal value on two price quotes from each of two Turkish producers of light-walled rectangular pipe and tube. See Volume II of the Petition at page II-11 and Exhibit II-27 and Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 2. The petitioners obtained these prices by engaging a consultant, who hired a research firm with an agent in Turkey. See Volume II of the Petition at II-12, Volume II of the Supplement to the Petition, and Memorandum to the File, "Telephone Call to Market Research Firm," dated July 17, 2007. In one case, this research firm obtained price quotations directly from the manufacturer. See Memorandum to the File, "Telephone Call to Market Research Firm," dated July 17, 2007. In another case, they were referred by the manufacturer to a distributor. *Id.* These price quotations identified specific products, terms of sales and payment terms. See Volume II of the Petition at II-12, Volume II of the Supplement to the Petition, and Memorandum to the File, "Telephone Call to Market Research Firm," dated July 17, 2007. Where appropriate, the petitioners made a deduction for freight, selling expenses, discount, and profit.

Based on our examination of the aforementioned, we consider the petitioner's calculation of normal value, based on price quotations, corroborated. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents as well as publicly available

information, we preliminarily determine the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *American Silicon Technologies v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found the adverse facts-available rate bore a "rational relationship" to the respondent's "commercial practices," and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed the calculation of margins in the Petition (e.g., *prices, expenses, adjustments, etc.*) reflects the commercial practices of the particular industry during the period of investigation. See Memorandum to the File, "Telephone Call to Market Research Firm," dated July 17, 2007. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine the highest margin in the Petition, which we determined during our pre-initiation analysis, was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination. Therefore, it is relevant as the adverse facts-available rate for the uncooperative respondents in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated in the

pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondents in this investigation, we have corroborated the adverse facts-available rate "to the extent practicable." See section 776(c) of the Tariff Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, "pursuant to the 'to the extent practicable' language \* \* \* the corroboration requirement itself is not mandatory when not feasible"). Therefore, we find that the estimated margin of 41.71 percent in the *Initiation Notice* has probative value. Consequently, with respect to MMZ, Guven Boru, and the other uncooperative respondents (Anadolu Boru, Ayata Metal Industry, Goktas Tube, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret, Ozgur Boru, Ozmak Makina ve Elektrik Sanayi, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., and Yusan Industries, Ltd.), we have applied the margin rate of 41.71 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice* at 40278.

#### All-Others Rate

Section 735(c)(5)(B) of the Tariff Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Tariff Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the all-others rate the simple average of the margins in the petition. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007). See also *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004). Consistent with our practice we used the rates in the Petition that were considered in the Department's initiation to calculate a simple average to be assigned as the all-others rate. That simple average, 27.04 percent, is derived from the following petition rates: 36.43 percent, 29.08 percent, 19.67 percent, 15.28 percent, 41.71 percent, 30.08 percent, 24.31 percent, and 19.75 percent. See Volume II of the

Supplement to the Petition dated July 6, 2007, at Exhibit 4.

This 27.04 percent rate will be applied to the following seven responsive firms that were not selected as mandatory respondents: Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Noksel Steel Pipe Co., Ozborsan Boru San. Ve Tic. A.S., Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Toscelik Profil Ve Sac End. A.S, and Yucel Boru ve Profil Endustrisi A.S.

#### Preliminary Determination

We preliminarily determine the following weighted-average dumping margins exist for the period April 1, 2006 through March 31, 2007:

Producer/Exporter	Weighted-average margin (percentage)
Güven Boru Profil Sanayii ve Ticaret Limited Sirketi .....	41.71
MMZ Onur Boru Profil Üretim San. ve Tic. A.S .....	41.71
Anadolu Boru .....	41.71
Ayata Metal Industry .....	41.71
Göktas Tube .....	41.71
Kalibre Boru Sanayi ve Ticaret A.S .....	41.71
Kerim Çelik Mamulleri İmalat ve Ticaret .....	41.71
Ozğür Boru .....	41.71
Ozmaç Makina ve Elektrik Sanayi .....	41.71
Seamless Steel Tube and Pipe Co. (Celbor) .....	41.71
Umran Steel Pipe Inc. ....	41.71
Yusan Industries, Ltd. ....	41.71
Borusan Mannesmann Boru Erbosan Erciyas Boru Sanayii ve Ticaret A.S .....	27.04
Noksel Steel Pipe Co .....	27.04
Ozborsan Boru San. ve Tic. A.S .....	27.04
Ozdemir Boru Sanayi ve Ticaret Ltd. Sti .....	27.04
Toscelik Profil ve Sac End. A.S .....	27.04
Yucel Boru ve Profil Endustrisi A.S .....	27.04
All Others .....	27.04

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of light-walled rectangular pipe and tube from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated in the chart above, as follows: (1) The rate for the firms

listed above will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 27.04 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

#### Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of light-walled rectangular Pipe and tube from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

#### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than fifty days after the date of publication of this notice. See 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. See 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Tariff Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be scheduled two days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is

requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. See 19 CFR 351.310(c). At the hearing oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: January 23, 2008.

**David M. Spooner,**  
Assistant Secretary for Import Administration.

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sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:**

Angelica Mendoza, Patrick Edwards (PROLAMSA), or Judy Lao (Maquilacero), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3019, (202) 482-8029, or (202) 482-7924, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 17, 2007, the Department initiated the antidumping duty investigation of LWR pipe and tube pipe and tube from Mexico. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China, (Initiation Notice), 72 FR 40274 (July 24, 2007)*. The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (collectively, petitioners).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Initiation Notice, 72 FR 40274 (July 24, 2007)*. No parties submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of LWR pipe and tube from Korea, Mexico, Turkey and the People's Republic of China are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Case Numbers: 701-TA-449 (Preliminary) and 731-TA-1118-1121 (Preliminary), 72 FR 49310, (August 28, 2007)*.

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-201-836]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico**

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

**EFFECTIVE DATE:** January 30, 2008.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular (LWR) pipe and tube from Mexico is being, or is likely to be,



exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of LWR pipe and tube from Mexico and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. The Department sent quantity and value questionnaires to the companies identified in the petition along with any other companies identified during our research. The following 14 companies were sent quantity and value (Q&V) questionnaires on July 31, 2007: Arco Metal S.A. de C.V., Hylsa S.A. de C.V., Industrias Monterrey S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero S.A. de C.V., Nacional de Acero S.A. de C.V., PEASA-Productos Especializados de Acero, Perfiles y Herrajes LM, S.A. de C.V., Productos Laminados de Monterrey S.A. de C.V., Regiomontana de Perfiles y Tubos, Talleres Acero Rey S.A. de C.V., Tuberias Aspe, Tuberia Laguna, S.A. de C.V., and Tuberias y Derivados S.A. de C.V.

The Department did not receive a response to the Q&V questionnaire (or received an improperly filed and/or incomplete response) from the following five companies: Industrias Monterrey S.A. de C.V., PEASA—Productos Especializados de Acero, Tuberias Aspe, Tuberias y Derivados S.A. de C.V., and Nacional de Acero S.A. de C.V. (Q&V Non-Responding Companies). These five companies that failed to respond, or provided an improperly filed and/or incomplete response, were given a second opportunity to file a response on August 16, 2007. We received no response from these companies.

The remaining nine exporters/producers responded to the Department's Q&V questionnaire: Arco Metal S.A. de C.V., Hylsa S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero S.A. de C.V., Perfiles y Herrajes LM, S.A. de C.V., Productos Laminados de Monterrey S.A. de C.V., Regiomontana de Perfiles y Tubos, Talleres Acero Rey S.A. de C.V., and Tuberia Laguna S.A. de C.V. (Q&V Responding Companies). Two Q&V Responding Companies—Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA)—accounted for the largest volume of subject merchandise exported to the United States during the POI. These two companies were selected as mandatory respondents pursuant to section 777A(c)(2)(1)(B) of the Act. *See* the September 6, 2007, Memorandum to Deputy Assistant Secretary Stephen J.

Claeys, titled “Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from Mexico (A–201–836); Respondent Selection” (Respondent Selection Memorandum). We issued antidumping duty questionnaires to Maquilacero and PROLAMSA on September 7, 2007.

#### **Maquilacero**

The Department received the Section A response from Maquilacero on October 9, 2007. Petitioners filed comments on Maquilacero's Section A response on October 16, 2007, and the Department subsequently issued a supplemental questionnaire regarding Maquilacero's Section A Response on October 23, 2007. We received the Sections B and C responses from Maquilacero on October 30, 2007. Petitioners filed comments on Maquilacero's Sections B and C responses on November 8, 2007. On November 19, 2007, Maquilacero filed its response to the Department's supplemental questionnaire regarding Section A. The Department issued a supplemental questionnaire to Maquilacero concerning the company's Sections B and C responses on November 20, 2007. Maquilacero replied to this supplemental questionnaire on December 4, 2007.

On December 5, 2007, based on an allegation timely filed by petitioners, the Department initiated a sales-below-cost investigation for Maquilacero, finding reasonable grounds to believe that Maquilacero made comparison market sales of LWR pipe and tube at prices below its cost of production. *See* “Cost of Production Analysis” section below for further information.

Consequently, the Department requested in a letter dated December 6, 2007, that Maquilacero respond to section D of the Department's antidumping duty questionnaire. We received Maquilacero's section D response on December 27, 2007. On January 4, 2008, the Department issued a supplemental questionnaire to Maquilacero regarding its section A through C supplemental responses. Maquilacero filed its response to the supplemental questionnaire on January 22, 2008. We were unable to analyze Maquilacero's response prior to the January 23, 2008, preliminary determination deadline. We will address any deficiencies in its responses for the final determination.

#### **PROLAMSA**

The Department received the section A response from PROLAMSA on October 9, 2007. Petitioners filed comments on PROLAMSA's section A

response on October 11, 2007, and the Department subsequently issued a supplemental questionnaire regarding PROLAMSA's section A Response on October 23, 2007. We received the sections B and C responses from PROLAMSA on October 29, 2007. On November 6, 2007, PROLAMSA filed its response to the Department's supplemental questionnaire regarding section A. Petitioners filed comments on PROLAMSA's sections B and C responses on November 8, 2007. The Department issued a supplemental questionnaire to PROLAMSA concerning the company's sections B and C responses on November 16, 2007. PROLAMSA replied to this supplemental questionnaire on December 7, 2007. The Department issued a second supplemental questionnaire with regard to PROLAMSA's supplemental responses for sections A, B and C of the questionnaire on December 20, 2007. PROLAMSA submitted its second supplemental response on January 7, 2008.

On December 4, 2007, based on an allegation timely filed by petitioners, the Department initiated a sales-below-cost investigation for PROLAMSA, finding reasonable grounds to believe that PROLAMSA made comparison market sales of LWR pipe and tube at prices below its cost of production. *See* “Cost of Production Analysis” Section below for further information. Consequently, the Department requested in a letter dated December 6, 2007, that PROLAMSA respond to Section D of the Department's antidumping duty questionnaire. We received PROLAMSA's Section D response on December 27, 2007.

#### **Maquilacero and PROLAMSA**

On December 26, 2007, petitioners timely filed with the Department separate allegations of targeted dumping for both Maquilacero and PROLAMSA. Maquilacero filed comments regarding petitioners' allegation of targeted dumping on January 7, 2008. Upon review of petitioners' allegations, the Department determined that further information was needed in order to adequately analyze petitioners' allegations. The Department issued a supplemental questionnaire to petitioners on January 11, 2008, requesting they address deficiencies identified by the Department. *See* Letter from Richard O. Weible, Office Director, to Petitioners, dated January 11, 2008. On January 15, 2008, PROLAMSA filed comments regarding petitioners' allegation of targeted dumping. Because there was a need for supplemental

information regarding these allegations, we do not have sufficient bases for making a finding of targeted dumping prior to the January 23, 2008, deadline for issuance of the preliminary determination. We intend to address these allegations in full upon receipt of a satisfactory response by petitioners to our request for additional information.

On January 18, 2008, two business days prior to the signature date for this preliminary determination, petitioners filed comments regarding the responses and data of Maquilacero and PROLAMSA for the Department's consideration for the preliminary determination. Petitioners' comments were specific to both companies' reported post-sale adjustments, and also, that the Department should not deduct negative margins from positive margins for the preliminary determination. Accordingly, the Department does not have sufficient time to address these comments for the preliminary determination.

#### **Postponement of Preliminary Determination**

On October 19, 2007, petitioners requested that the Department postpone the preliminary determination by 50 days. The Department published an extension notice on November 14, 2007, which set the new deadline for the preliminary determination at January 23, 2008. *See Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 72 FR 64044 (November 14, 2007).

#### **Period of Investigation**

The period of investigation (POI) is April 1, 2006, to March 31, 2007.

#### **Scope of Investigation**

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated:

1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of

lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### **Model Match**

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the "Scope of Investigation" section above, and sold in Mexico during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of LWR pipe and tube from the Republic of Korea, Turkey, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. In addition, the Department requested that all parties in this investigation and in the concurrent antidumping duty investigations of LWR pipe and tube from the Republic of Korea and Turkey submit comments on the appropriate model matching methodology. *See* Letter from Richard Weible, Office Director, AD/CVD Enforcement 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM, S.A. de C.V. on August 23, 2007; from the Mexican companies PROLAMSA and Prolamsa USA, Inc. (PROLAMSA's U.S. sales affiliate) on August 27, 2007, and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the petitioners on August 24, 2007. However, the Department has not made any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type,

whether metallic coated or not, whether painted or not, perimeter, wall thickness, and shape. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. For both PROLAMSA and Maquilacero, it was necessary to rely on facts available in order to properly match U.S. sales of subject merchandise to comparison market sales of the foreign like product as discussed below.

Maquilacero's home market sales included sales of non-prime merchandise. As noted in Maquilacero's original and supplemental questionnaire responses, Maquilacero does not record certain product characteristics for its sales of non-prime merchandise. Specifically, Maquilacero does not document the perimeter, thickness, or shape of its non-prime sales on the documents produced in its ordinary course of trade. As such, these product characteristics for non-prime merchandise were not specifically identified in Maquilacero's home market database (in neither their respective field and nor in the control number (CONNUM) string). Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the necessary product characteristic information needed to properly perform our margin calculations with respect to these sales is not on the record of this investigation, we must rely on facts otherwise available. In order for the Department to accurately compare Maquilacero's comparison market sales to its U.S. sales and its cost of production data, the Department applied, as neutral facts available, the product characteristics of the most common type of LWR pipe and tube (CONNUM) sold in the comparison market to the missing product characteristics of non-prime merchandise (*i.e.*, perimeter, thickness, and shape). For more details regarding the application of neutral facts available to Maquilacero's sales of non-prime LWR pipe and tube, *see* Memorandum to the File titled "Analysis of Data Submitted by Maquilacero S.A. de C.V. (Maquilacero) in the Preliminary Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated January 23, 2008 (Maquilacero Preliminary Analysis Memo).

With respect to PROLAMSA's reported steel input type (INPUTH/U), we note that the model matching criteria designated by the Department in its antidumping duty questionnaire requested that respondent report steel input type as either: hot-rolled steel or cold-rolled steel. In its initial and supplemental questionnaire responses, PROLAMSA reported a third designation in its fields for INPUTH/U as it claims to not know whether these coils were of hot-rolled or cold-rolled steel. As noted above, section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the necessary product characteristic information needed to properly perform our margin calculations with respect to these sales is not on the record of this investigation, we must rely on facts otherwise available. Therefore, for purposes of this preliminary determination, we have revised PROLAMSA's reported steel input type for those sales that PROLAMSA could not identify as hot-rolled or cold-rolled steel in both PROLAMSA's comparison market and U.S. sales databases. Specifically, based on neutral facts available, we re-coded the reported CONNUMH/U and INPUTH/U as either hot-rolled or cold-rolled steel depending upon the reported thickness (THICKH/U) for these products. Due to the proprietary nature of this issue, see Memorandum to the File titled "Analysis of Data Submitted by Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA) in the Preliminary Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated January 23, 2008 (PROLAMSA Preliminary Analysis Memo) for further details.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the Q&V Non-Responding Companies. As noted in the "Supplementary Information" section above, the Q&V Non-Responding Companies failed to respond (or to respond in a timely fashion) to the Department's Q&V questionnaire and to the Department's follow up letter dated August 16, 2007.

Section 776(a)(2) of the Act provides that, (1) if an interested party withholds information requested by the administering authority, (2) fails to provide such information by the deadlines for submission of the information and in the form or manner

requested, subject to subsections (c)(1) and (e) of section 782, (3) significantly impedes a proceeding under this title, or (4) provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, the Q&V Non-Responding Companies all failed to provide the information requested by the deadlines for submission of the information and/or in the form or manner requested. Specifically, the Q&V Non-Responding Companies did not respond to our Q&V questionnaires and, as such, they failed to provide pertinent information that we requested for our consideration and selection of mandatory respondents, thereby significantly impeding this proceeding. Thus, for these companies, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based their dumping margin on facts otherwise available.

#### Application of Adverse Inferences for Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–54026 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and*

*Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–55796 (August 30, 2002). The SAA explains that the Department may apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–4199. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

Although the Department provided the Q&V Non-Responding Companies with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Act, these companies did not respond as requested. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because these companies did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that the Q&V Non-Responding Companies failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other

information placed on the record. See also, 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to the Q&V Non-Responding Companies the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 11.50 percent. (See *Initiation Notice* at 40278.)

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested

parties during the particular investigation. See 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. See *Initiation Checklist*. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the Petition to derive margins. During our pre-initiation analysis, we also examined information from various independent sources provided either voluntarily in the Petition or, based on our requests, in supplements to the Petition, that corroborates key elements of the export-price and normal-value calculations used in the Petition to derive estimated margins.

Specifically, the petitioners calculated a single export price using the average monthly Customs Unit Values (AUVs) ((Free Alongside Ship) (FAS)) of LWR pipe and tube from Mexico for consumption in the United States, classified under HTSUS numbers 7306.60.50.00 and 7306.61.50.00. As the IM145 data is considered direct import data from CBP, we consider petitioners' AUVs based on this data to be reliable. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the Petition.

The petitioners adjusted export prices for inland freight from the plant to the port of importation, specifically, Laredo, Texas. The petitioners used inland freight charges obtained from inland freight price quotes from certain Mexican producers of LWR pipe and tube. See Petition at page II–10 and July 6, 2007 Supplement to the Petition at 7. This is a source of information that we consider reliable. See, e.g., *Notice of Preliminary Determination of Sales at Less than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the adjusted information provided in the Petition, nor the July 6, 2007, deficiency response.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of net U.S. prices corroborated.

With respect to normal value, petitioners derived Mexican comparison market prices by obtaining price quotations from certain Mexican manufacturers of LWR pipe and tube through an economic consultant, which identified specific terms of sale and payment terms. Petitioners made no adjustments to the quoted prices, as the terms of delivery for the quotations were "free on board" (FOB) at the respective manufacturing facilities. See Volume II of the Petition at 6–7, Exhibits II–14 and II–15, and Volume II of the Supplement to the Petition, dated July 6, 2007, at 1, 3–5 and Exhibits 4 and 5.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of net comparison market prices corroborated.

We also examined information obtained from interested parties during this particular investigation to corroborate the home market and U.S. prices. Certain transaction-specific margin percentages calculated for Maquilacero and PROLAMSA exceeded those from the Petition.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents, publically available information and primary information submitted by respondents Maquilacero and PROLAMSA, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the adverse

facts-available rate bore a “rational relationship” to the respondent’s “commercial practices,” and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of margins in the Petition reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the highest margin in the Petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts-available rate for the Q&V Non-Responding Companies in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first segment of this proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated for the initiation stage of this investigation and preliminarily determined to be relevant to the Q&V Non-Responding Companies in this investigation, we have corroborated the adverse facts-available rate “to the extent practicable.” See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, “pursuant to the ‘to the extent practicable’ language, the corroboration requirement itself is not mandatory when not feasible”). Therefore, we find that the estimated margin of 11.50 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to the Q&V Non-Responding Companies, we have applied the margin rate of 11.50 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice* at 40278.

#### Date of Sale

Section 351.401(i) of the Department’s regulations states the Department normally will use the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than

the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i). Maquilacero reported the sales invoice date as the date of sale for all sales in the U.S. and in the comparison market. See Maquilacero’s Section B and C Response at B–23 and C–19, respectively. PROLAMSA reported the sales invoice date as the date of sale for all sales in the comparison and U.S. markets. See PROLAMSA’s Section B and C Response at B–18 and C–15, respectively. However, with regard to PROLAMSA, the company reported two invoice dates as all of its sales are back-to-back CEP sales. The first invoice date (which is identical to the date of shipment) is the date on which PROLAMSA invoices its U.S. affiliate, Prolamsa, Inc. The second reported invoice date is the date on which Prolamsa, Inc. invoices the unaffiliated U.S. customer. We have preliminarily determined that the date of PROLAMSA’s invoice to Prolamsa, Inc. is the appropriate date to use as PROLAMSA’s date of sale as it is the date that the material terms of sale are set.

Based on the responses of both companies, and having no record evidence that would indicate otherwise, we preliminarily determine that the sales invoice date is the appropriate date of sale in both markets for Maquilacero and PROLAMSA. For a further discussion of this issue, see Maquilacero Preliminary Analysis Memo; see also, PROLAMSA Preliminary Analysis Memo.

#### Fair Value Comparisons

To determine whether sales of LWR pipe and tube from Mexico were made in the United States at less than normal value (NV), we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of EP (and CEP), when appropriate.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated

purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

#### Maquilacero

Maquilacero classified its sales to the United States solely as EP sales, *i.e.*, sales to unaffiliated direct end user customers. Maquilacero’s U.S. sales were made directly to unaffiliated customers in the United States prior to importation, and CEP is not otherwise warranted based on Maquilacero’s questionnaire response. Therefore, for purposes of this preliminary determination, we have accepted Maquilacero’s classification of its sales to the United States as EP sales.

Accordingly, we calculated EP based on prices charged to the first unaffiliated U.S. customer. We based EP on the packed and delivered (to port and/or to customer) prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, and foreign brokerage and handling. When appropriate, we adjusted prices to reflect deductions and/or increases to prices due to billing adjustments, early payment discounts and rebates. See Maquilacero Preliminary Analysis Memo.

#### PROLAMSA

PROLAMSA’s U.S. sales were made by its U.S. affiliate, Prolamsa, Inc. We therefore based all of PROLAMSA’s prices to the United States on CEP. When appropriate, we adjusted prices to reflect deductions and/or increases to price due to billing adjustments, early payment discounts and rebates. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, brokerage and handling in the country of manufacture, international freight, and U.S. brokerage and handling.

In its supplemental questionnaire responses, PROLAMSA explained that it was never invoiced for foreign inland freight services provided on certain U.S. sales. As such, PROLAMSA reported no

inland freight expense for these observations. See Prolamsa's Second Supplemental Response at 9. As a general matter, our calculations include the value of foreign inland freight services because these services are not provided on a gratuitous basis. Although Prolamsa claims that it was never invoiced for these services on certain U.S. sales, the suppliers of said services still could invoice Prolamsa for these services provided in connection with certain POI sales. There is no record evidence that the suppliers wrote off the value of these services from their accounts receivable. Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the expenses needed to properly calculate net CEP for these sales are not on the record of this investigation, we must rely on facts otherwise available. Accordingly, based on neutral facts available, we revised Prolamsa's reported foreign inland freight to account for missing values for certain U.S. sales. Specifically, we used a weighted average of all observations where a positive value was reported under the inland freight field (DINLFTPU), and where those observations had an identical destination and customer code in Prolamsa's dataset, for the sales in question. For further details, see Prolamsa's Preliminary Analysis Memo dated January 23, 2008.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*i.e.*, commissions and imputed credit expenses). We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. See Prolamsa Preliminary Analysis Memo.

## Normal Value

### A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market (*i.e.*, Mexico) to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(I) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was

greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the respondents' sales of LWR pipe and tube in Mexico were sufficient to find the home market as viable for comparison purposes. Accordingly, we calculated NV for Maquilacero and Prolamsa based on sales prices to Mexican customers.

### B. Arm's-Length Test

Maquilacero and Prolamsa reported sales of the foreign like product to affiliated and unaffiliated customers in the comparison market. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at "arm's-length." See 19 CFR 351.403(c). To test whether these sales were made at arm's-length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. See 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party were excluded from the NV calculation. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002); see also, Maquilacero Preliminary Analysis Memo and Prolamsa Preliminary Analysis Memo.

### C. Cost of Production Analysis

Based on our analysis of petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Maquilacero's and Prolamsa's sales of LWR pipe and tube in the comparison market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether these companies had sales that were made at prices below their respective COPs. See Memorandum to Richard O. Weible, Director, Office 7, titled "Petitioners' Allegation of Sales Below the Cost of Production for Maquilacero S.A. de C.V.," dated December 5, 2007

(Maquilacero Cost Initiation Memo); see also, Memorandum to Richard O. Weible, Director, Office 7, titled "Petitioners' Allegation of Sales Below the Cost of Production for Productos Laminados de Monterrey S.A. de C.V.," dated December 4, 2007 (Prolamsa Cost Initiation Memo).

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COP based on the sum of their costs of materials and conversion for the foreign like product, plus an amount for home market selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs. See the "Test of Comparison Market Sales Prices" section below for the treatment of comparison market selling expenses.

The Department relied on the COP data submitted by Maquilacero and Prolamsa, in their respective section D questionnaire responses for the COP calculation, except for the following instances:

*Maquilacero:* We adjusted Maquilacero's reported total cost of manufacturing (TOTCOM) to include certain rebates which Maquilacero received from its supplier of hot-rolled coils; rebates which Maquilacero had previously included as an adjustment to price. We adjusted Maquilacero's data to apply this ratio to the reported TOTCOM of each CONNUM.

*Prolamsa:* We adjusted Prolamsa's G&A expense ratio to include 2006 profit-sharing costs included in Prolamsa's 2006 audited financial statements and applied the adjusted G&A ratio to the revised TOTCOM of each CONNUM.

For a complete discussion of the changes made to the cost information submitted by Maquilacero and Prolamsa, see Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Maquilacero, S.A. de C.V.," dated January 23, 2008 (Maquilacero COP Memo); see also, Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa)," dated January 23, 2008 (Prolamsa COP Memo).

#### 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-

average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in "substantial quantities." See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POI. In such cases, because we compared prices to POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Maquilacero's and PROLAMSA's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Calculation of Normal Value Based on Comparison Market Prices

*Maquilacero*: We calculated NV based on prices to unaffiliated customers (as well as those affiliated customers which passed the arm's length test) and matched U.S. sales to NV. We made deductions, where appropriate, for billing adjustments, discounts, rebates, movement expenses, and packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as

appropriate (*i.e.*, commissions and credit), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

*PROLAMSA*: We based comparison market prices on packed prices to unaffiliated customers (as well as those affiliated customers which passed the arm's length test) in Mexico. Starting with gross prices, we added or subtracted billing adjustments and rebates, where appropriate, and deducted early payment discounts. We adjusted the starting price for inland freight and insurance, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, as PROLAMSA's sales were all CEP sales, for comparisons made to those CEP sales, we only deducted Mexican credit expenses and commissions from comparison market prices, because U.S. credit expenses and commissions were deducted from U.S. price, as noted above and in accordance with section 772(c)(2) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b).

#### E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. See section 351.412(c)(i) of the Department's regulations. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. See section 351.412(c)(ii) of the Department's regulations. See also *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated

customer. If the comparison market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales.

See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

*Maquilacero*: Maquilacero reported two channels of distribution in the comparison market (*i.e.*, Mexico): (1) Distributors and end-users. Maquilacero reported its selling functions to both distributors and end-users in the home market as: sales forecasting, strategic/economic planning, advertising, sales

promotion, packing, inventory maintenance, order input/processing, direct sales personnel, market research, providing cash and early payment discounts, providing warranty services, providing freight and delivery, travel to customer location, collections, and paying commissions. We examined the selling activities reported for each channel of distribution and organized the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. We found that Maquilacero's level of selling functions to its home market customers for each of the four selling function categories did not vary significantly by channel of distribution. See Maquilacero's Supplemental Section A Response at Exhibit 16. Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

Maquilacero reported that all of its sales to the United States were EP sales made through two channels of distribution, *i.e.*, distributors and end-users. For EP sales, we examined the selling activities related to each of the selling functions between Maquilacero and its U.S. customers. Maquilacero reported its selling functions to both distributors and end-users in the United States as: sales forecasting, strategic/economic planning, engineering services, advertising, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, market research, providing cash and early payment discounts, providing warranty services, providing freight and delivery, travel to customer location, collections, and paying commissions. We examined the four selling function categories and found that Maquilacero's selling functions for its U.S. sales did not vary significantly by channel of distribution. Therefore, we preliminary determine that Maquilacero's U.S. sales constitute a single LOT.

We then compared the selling functions Maquilacero provided in the comparison market LOT with the selling functions provided to the U.S. LOT. On this basis, we determined that the comparison market LOT is similar to Maquilacero's U.S. LOT. We made this determination based upon the minor differences that exist between Maquilacero's comparison and U.S. markets in terms of the selling functions that are provided to Maquilacero's customers in each market. Moreover, we find that the degree to which Maquilacero provides these identical

selling functions for its customers in both markets to be similar (*i.e.*, sales forecasting, strategic/economic planning, advertising and promotion, packing, order input/processing, market research, cash and early payment discounts, warranty service, sales and marketing support, technical assistance, and after-sales services). Therefore, we preliminarily determine that Maquilacero is not entitled to a LOT adjustment.

**PROLAMSA:** In the present investigation, PROLAMSA did not request a LOT adjustment. See PROLAMSA's Section B Response at B-27. In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>1</sup> including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

PROLAMSA reported one LOT in the comparison market, Mexico, with two channels of distribution to five classes of customers: (1) Direct sales to distributors, builders (construction), and industrial end-users (collectively, Channel 1), and (2) direct sales to automotive and original equipment manufacturers (OEMs) and furniture producers (collectively, Channel 2). PROLAMSA further identified its customer categories by those that typically order stock subject merchandise (*i.e.*, Channel 1 customers), and those that typically order non-stock (or "made to order") subject merchandise (*i.e.*, Channel 2 customers). See PROLAMSA's Section A Response at A-11 through A-12; *see also*, PROLAMSA's Section A Response at Exhibit A-5 and PROLAMSA's Supplemental A Response at Exhibit A-18.

Based on our review of the record evidence, we find that comparison market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. See PROLAMSA's Supplemental A Response at Exhibit A-18 (*i.e.*, the revised selling functions chart). Specifically, PROLAMSA performed the same selling functions at a similar level of performance for sales

<sup>1</sup> The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered PROLAMSA's narrative response to properly determine where in the chain of distribution the sale occurs.

in both comparison market channels of distribution (*e.g.*, packing, order input/processing, direct sales personnel and marketing support, technical assistance, rebates, cash discounts, commissions, freight and delivery). *Id.* We find that the only meaningful difference between the two channels in terms of the services provided in the stages of marketing (and the degree of performance of those services) is that PROLAMSA provides inventory maintenance services at a higher degree for its Channel 1 customers. We do not find this difference alone to be sufficient for finding more than one LOT. Accordingly, we preliminarily find that PROLAMSA had only one LOT for its comparison market sales.

PROLAMSA reported one LOT with regard to its CEP sales through Prolamsa, Inc., with two channels of distribution in the United States, and with four classes of customers for those CEP sales: (1) Sales through U.S. affiliate (CEP sales) to other producers of LWR pipe and tube, distributors and service centers, and metal building and component manufacturers (collectively, Channel (1) and (2) sales through U.S. affiliates (CEP sales) to OEMs (Channel 2). Similar to its comparison market customers, PROLAMSA further identified its U.S. customer categories by those that typically order stock subject merchandise (*i.e.*, Channel 1 customers), and those that typically order non-stock (or "made to order") subject merchandise (*i.e.*, Channel 2 customers). See PROLAMSA's section A Response at A-11 through A-12; *see also*, PROLAMSA's Supplemental A Response at Exhibit A-18.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by PROLAMSA on CEP sales for both channels of distribution relating to the CEP LOT, as described by PROLAMSA in its questionnaire responses, after these deductions. We have determined that the selling functions performed by PROLAMSA on its U.S. sales (all of which are CEP sales) are similar because for all U.S. sales, PROLAMSA provides almost no selling functions to its U.S. affiliate, Prolamsa, Inc., in support of either channel of distribution. PROLAMSA reported that the only services it provided for its CEP sales were packing, freight and delivery direct to the U.S. customer (which included documentation preparation related to packing and shipment of the



merchandise to the U.S. port of importation)<sup>2</sup> and very limited sales/marketing support services through customer visits.

See PROLAMSA's Supplemental A Response at A-9 and Exhibit A-18. Accordingly, because the selling functions provided by PROLAMSA for CEP sales are comparably minimal, and the selling functions provided by Prolamsa, Inc. to unaffiliated customers in the United States in both channels of distribution are substantially similar and provided at the same degree of service (*i.e.*, order input/processing, direct sales personnel, provide cash discounts, commissions, warranty service, visits to customers, calls and correspondence to U.S. customers), we preliminarily determine that there is one CEP LOT in the U.S. market. As PROLAMSA made no direct sales to unaffiliated customers in the United States during the POI, there is no additional analysis required to compare LOTs in the U.S. market.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there are no data available to determine the existence of a pattern of price difference. PROLAMSA reported that it provided minimal selling functions and services for the one (CEP) LOT in the United States and that, therefore, the comparison market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by PROLAMSA for sales in the comparison market and CEP sales in the U.S. market, we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because PROLAMSA provides many more selling functions in the comparison market at a higher level of service as compared to selling functions performed for its CEP sales (*i.e.*, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, technical assistance, provide rebates, rebates, cash discounts, pay commissions, provide warranty service, provide freight and delivery, visit customers, and call and correspond with customers). Thus, we find that PROLAMSA's comparison market sales are at a more advanced LOT than its CEP sales. There was only one LOT in

the comparison market, and there are no data available to determine the existence of a pattern of price difference, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted from NV the comparison market indirect selling expenses from NV for comparison market sales that were compared to U.S. CEP sales. As such, we limited the comparison market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Dow Jones Reuters Business Interactive LLC (trading as "Factiva"). See Import Administration Web site at: <http://ia.ita.doc.gov/exchange/index.html>.

#### All-Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all-others rate is equal to the weighted average of the estimated weighted-average dumping margins of all respondents investigated, excluding zero or *de minimis* margins and any margins determined exclusively under section 776 of the Act. Maquilacero and PROLAMSA are the only respondents in this investigation for which the Department has calculated a company-specific rate. For PROLAMSA, we calculated a zero rate; however, for Maquilacero, we calculated a rate above *de minimis*. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the above *de minimis* rate calculated for Maquilacero as the all-others rate, as referenced in the "Suspension of Liquidation" section below.

#### Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

#### Preliminary Determination

The weighted-average dumping margins are as follows:

Producer/exporter	Weighted-average margin (percentage)
Maquilacero S.A. de C.V. ....	4.96
Productos Laminados S.A. de C.V. (PROLAMSA) .....	0.00
Arco Metal S.A. de C.V. ....	4.96
Hylsa S.A. de C.V. ....	4.96
Industrias Monterrey S.A. de C.V. ....	11.50
Internacional de Aceros, S.A. de C.V. ....	4.96
Nacional de Acero S.A. de C.V. ....	11.50
PEASA-Productos Especializados de Acero ..	11.50
Perfiles y Herrajes LM, S.A. de C.V. ....	4.96
Regiomontana de Perfiles y Tubos .....	4.96
Talleres Acero Rey S.A. de C.V. ....	4.96
Tuberias Aspe .....	11.50
Tuberia Laguna, S.A. de C.V. ....	4.96
Tuberias y Derivados S.A. de C.V. ....	11.50
All Others .....	4.96

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR pipe and tube from Mexico, with the exception of those produced and exported by PROLAMSA, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart above, as follows: (1) The rate for the firms listed above (except for PROLAMSA, *see below*) will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.96 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

In accordance with 19 CFR 351.204(e)(2), because the weighted-average margin for PROLAMSA is zero, we will not instruct CBP to suspend liquidation of merchandise produced and exported by PROLAMSA.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC

<sup>2</sup>PROLAMSA explained in its questionnaire responses that the U.S. affiliate, Prolamsa, Inc., does not take physical possession of the merchandise when it arrives in the United States. See PROLAMSA's Supplemental A Response at A-8 through A-9.

will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of LWR pipe and tube from Mexico are materially injuring, or threaten material injury to, the U.S. industry. We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

This determination is issued and published pursuant to sections 733(f) and 777(I)(1) of the Act.

Dated: January 23, 2008.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

[FR Doc. E8-1654 Filed 1-29-08; 8:45 am]

**BILLING CODE 3510-DS-P**

### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined.

Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

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**DEPARTMENT OF COMMERCE**
**International Trade Administration**
**[A-580-859]**
**Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Light-Walled Rectangular Pipe and Tube From the Republic of Korea**

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

**EFFECTIVE DATE:** January 31, 2008.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request from Nexteel Co., Ltd. (Nexteel), we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** David Cordell, (Kukje Steel Co., Ltd.), Mark Flessner (Nexteel Co., Ltd.), or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0408, (202) 482-6312, or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:**
**Background**

On July 17, 2007, the Department initiated the antidumping duty

investigation of light-walled rectangular pipe and tube from the Republic of Korea. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from the Republic of Korea, Mexico, Turkey, and the People's Republic of China, (Initiation Notice), 72 FR 40274 (July 24, 2007).* The Petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (Petitioners).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments. *See Initiation Notice, 72 FR 40274, 40275 (July 24, 2007).* No party submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (the Commission) preliminarily determined there is a reasonable indication that imports of light-walled rectangular pipe and tube from Korea, Mexico and Turkey are materially injuring the U.S. industry and notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey, Investigation Nos. 701-TA-449 and 731-TA-1118-1121 (Preliminary), 72 FR 49310 (August 28, 2007).*

Section 777A(c)(1) of the Tariff Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of light-walled rectangular pipe and tube from the Republic of Korea (Korea) and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(2) of the Tariff Act. The Department sent quantity and value (Q&V) questionnaires to the companies identified in the petition, as well as to other companies identified during our analysis. On July 31, 2007, the Department sent Q&V questionnaires to the following companies: Ahshin Pipe & Tube, Dong-A Steel Pipe Co. Ltd., Han Gyu Rae Steel Co., Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Kukje Steel Co. (Kukje), Ltd., Miju Steel Mfg. Co. Ltd., Nexteel, SeAH Steel Corporation, Ltd. (SeAH), and Yujin Steel Industry Co.

Ahshin Pipe & Tube mailed its response by first class mail dated August 20, 2007, but that letter was not

submitted as required through our Central Records Unit, did not include a complete response to the Department's Q&V questionnaire or include the required certifications, and was not served on all interested parties. Consequently, the response did not comport with 19 CFR 351.103, 351.302(d)(1), 351.303(f)(2) and 351.303(g), and was returned to Ahshin Pipe & Tube on September 7, 2007.

On August 27, 2007 and September 28, 2007, the Department requested that Han Gyu Rae Steel Co., Ltd., (Han Gyu Rae) resubmit its public version of its response to the Q&V questionnaire which it had submitted on August 17, 2007, because a proper public version was not provided. In its September 28, 2007, letter the Department warned Han Gyu Rae that it may not accept the response as currently filed and that the Department may apply facts available in accordance with section 776 of the Tariff Act, and pursuant to 19 CFR 351.308. The Department received no reply from Han Gyu Rae and thus returned its August 17, 2007, submission on November 9, 2007. Furthermore, the Department did not receive any response at all to either its July 31, 2007, quantity and value questionnaire or its August 16, 2007, follow-up letter from the following companies: Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., and Yujin Steel Industry Co.<sup>1</sup>

Three respondents—SeAH, Kukje and Nexteel—responded to the Department's Q&V questionnaire. Kukje and Nexteel accounted for the largest volume of subject merchandise exported to the United States during the period of investigation (POI). Hence, these two firms were selected as mandatory respondents pursuant to section 777A(c)(2)(1)(B) of the Tariff Act. See the September 5, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, entitled "Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from the Republic of Korea (Korea) (A-580-859), Respondent Selection" (Respondent Selection Memorandum). We issued antidumping questionnaires to Kukje and Nexteel on September 7, 2007.

The Department received the Section A response from Kukje on October 5, 2007, and from Nexteel on October 10, 2007. Petitioners provided comments on Kukje's and Nexteel's Section A

responses on October 16, 2007. On October 19, 2007, the Department issued Nexteel a supplemental questionnaire concerning its October 10, 2007, Section A response. On October 22, 2007, Kukje informed the Department that Kukje was unable to respond further to the antidumping questionnaire. We received the Sections B and C responses from Nexteel on October 29, 2007. Nexteel also responded voluntarily to Section D, Cost of Production, in this submission.

On November 9, 2007, Petitioners provided comments on Nexteel's Sections B and C response, and submitted a cost allegation with respect to Nexteel. On November 27, 2007, the Department issued a supplemental questionnaire to Nexteel concerning Nexteel's Sections B and C response, to which Nexteel responded on December 19, 2007.

On December 7, 2007, the Department initiated a cost investigation on Nexteel. See memorandum from Mark Flessner, Case Analyst, and Christopher J. Zimpo, Accountant, to Richard O. Weible, Director, Office 7, entitled "Petitioners' Allegation of Sales Below the Cost of Production for Nexteel Co. Ltd.," dated December 7, 2007 (Cost Allegation Memorandum). On December 21, 2007, the Department issued a supplemental questionnaire to Nexteel concerning Nexteel's Section D response, to which Nexteel responded on January 10, 2008.

On December 26, 2007, petitioners timely filed with the Department an allegation of targeted dumping for Nexteel. Nexteel filed comments regarding petitioners' allegation on January 3, 2008. Upon review of petitioners' allegation, the Department determined that further information was needed in order to adequately analyze petitioners' allegation. The Department issued a supplemental questionnaire to petitioners on January 14, 2008, requesting that they address deficiencies identified by the Department. See Letter from Richard O. Weible, Director, Office 7, to Petitioners, dated January 14, 2008. Because there was a need for supplemental information regarding the allegation, we do not have sufficient bases for making a finding of targeted dumping prior to the January 23, 2008, deadline for issuance of the preliminary determination. We intend to address the allegation in full upon receipt of a satisfactory response by Petitioners to our request for additional information.

On October 19, 2007, the Petitioners requested the Department postpone the preliminary determination by 50 days pursuant to 19 CFR 351.205(e). The Department published a notice of postponement on November 14, 2007,

which set the new deadline for the preliminary determination at January 23, 2008. See *Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 72 FR 64044 (November 14, 2007).

#### Period of Investigation

The POI is April 1, 2006, to March 31, 2007.

#### Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### Model Match

In accordance with section 771(16) of the Tariff Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Korea during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in the investigation of light-walled rectangular pipe and tube from the Republic of Korea and in the concurrent antidumping duty investigations of light-walled

<sup>1</sup> The Department sent its questionnaires and its follow up letter via an international delivery service. Records show each of the companies in question received and signed for the July 31, 2007, quantity and value questionnaire and the August 16, 2007, follow-up letter.

rectangular pipe and tube from Mexico, Turkey, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products; parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Mexico and Turkey were also invited to comment on the appropriate model matching methodology. See Letter from Richard Weible, Director, Office 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM on August 23, 2007; from the Mexican companies Productos Laminados de Monterrey S.A. de C.V. and Prolamsa USA, Inc. on August 24, 2007 August 27, 2007 and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the Petitioners on August 24, 2007. The Department did not make any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type, whether metallic coated or not, whether painted or not, perimeter, wall thickness and shape. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the following nine companies: Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae, and Kukje. As noted in the Supplementary Information section above, the first six companies failed to respond to the Department's Q&V questionnaire and to the Department's follow up letter of August 16, 2007. Ahshin Pipe & Tube submitted an improper, incomplete, and untimely Q&V questionnaire response that the Department returned; Han Gyu Rae failed to resubmit its August 17, 2007 Q&V response and the Department returned Han Gyu Rae's Q&V submission on November 9, 2007. On October 22, 2007, Kukje informed the

Department that it was unable to respond further to the antidumping questionnaire.

Section 776(a)(2) of the Tariff Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(I), the administering authority shall use, subject to section 782(d) of the Tariff Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Tariff Act provides that, if the administering authority determines a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Tariff Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, and Han Gyu Rae all failed to provide necessary information by the deadlines for submission of the information and/or in the form or manner requested. Thus, for these eight companies in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin on facts otherwise available.

Kukje, one of the mandatory respondents, did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, Kukje failed to provide a complete response to our questionnaire, thereby withholding, among other things, home-market and U.S. sales information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Tariff Act. Thus, in

reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for Kukje on facts otherwise available.

#### Application of Adverse Inferences for Facts Available

According to section 776(b) of the Tariff Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See, e.g., *id.* Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

Although the Department provided all respondents, including Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje, with notice informing them of the consequences of their failure to respond adequately to the questionnaire in this case, pursuant to section 782(d) of the Tariff Act, the companies listed above did not respond as requested. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Tariff Act.<sup>2</sup> Based on the above, the

<sup>2</sup> As noted earlier, the Department sent its quantity and value questionnaires and its follow up letter via an international delivery service and records show that each of the companies in question received and signed for the July 31, 2007,

Department has preliminarily determined that Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Tariff Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c). It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 30.66 percent. *See Initiation Notice* at 40278.

When using facts otherwise available, section 776(c) of the Tariff Act provides that when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from

independent sources that are reasonably at its disposal.

To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, vol. 1 (1994) at 870 (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-4199. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d).

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist*. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export price and normal value calculations used in the Petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the Petition or in supplements to the Petition that corroborates key elements of the export price and normal value calculations used in the Petition to derive estimated margins.

Specifically, the Petitioners calculated an export price using U.S. price quotes

it obtained for light-walled rectangular pipe and tube from Korea. These price quotes identify the price that the first U.S. purchaser unaffiliated with the foreign producer, *i.e.*, the international trader/importer, offered to its customer. The Petitioners also calculated a second export price using the average monthly Customs Unit Values (AUVs) ((Free Alongside Ship) (F.A.S.)) of light-walled rectangular pipe and tube from Korea for consumption in the United States, classified under HTSUS numbers 7306.60.50.00 and 7306.61.50.00, gathered from the Bureau of the Census IM145 import statistics. We then compared the U.S. price quote to the AUVs for this period and confirmed that the value of the U.S. price quote was consistent with the AUV's. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the Petition.

The Petitioners adjusted export prices for international freight and dealer mark-up. The Petitioners used the difference between the F.A.S. and C.I.F. AUVs for imports from Korea to the United States to calculate international freight costs. *See* Petition at page II-10; *see also* July 6, 2007 Supplement to the Petition at 6. These data are from the U.S. Customs and Border Protection (CBP) and the U.S. Census Bureau, which are sources of information that we consider reliable. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538, 48540 (August 18, 2005), (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the adjusted information provided in the Petition. The Petitioners estimated the distributor mark-up based on Searing Industries sales personnel's knowledge of importer's mark-ups in the domestic light-walled rectangular tubing industry. The Petitioners provided an affidavit from persons attesting to the validity of the distributor mark-up value the Petitioners used in the calculation of net U.S. price. *See Initiation Checklist* at 9.

Based on our examination of the aforementioned information, we consider the Petitioners' calculation of net U.S. prices corroborated.

With respect to normal value, the Petitioners derived Korean home market prices from a January 2007 edition of the *Korean Metal Journal*, a recognized industry journal; no evidence on the

quantity and value questionnaire and the August 16, 2007, follow-up letter.

record questions the validity of this source. Two series of prices were listed: a "consumer" price (based on destination) and a "wholesale price." As a conservative measure, the lower-valued wholesale price was selected; this is more reflective of sales to distributors. Prices were quoted in won per meter and were converted into U.S. dollars using an average dollar weight for the proposed POI. The prices were also converted from meters to hundred-pound-weight (cwt), as cwt is the weight by which the subject merchandise is typically sold in the United States. Petitioners claim the delivery term for the wholesale price is ex-factory as demonstrated by the single price for all regions of the country, whereas consumer prices vary by different regions of the country suggesting the inclusion of freight. Petitioners note the products for which they obtained U.S. prices fall within the product category used for Normal Value (NV) from the *Korean Metal Journal*. See Volume II of the Petition at pages 9–10 and Exhibits II 21–23 and Volume II of the Supplement to the Petition dated July 6, 2007 at pages 1–2 and Exhibit 1.

Based on our examination of the aforementioned information, we consider the Petitioners' calculation of net home market prices corroborated.

We also examined information obtained from interested parties to corroborate the home market and U.S. prices. Margin percentages calculated for Nexteel exceeded those from the Petition.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents, publicly available information, and primary information submitted by respondent Nexteel, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's

uncharacteristic business expense that resulted in an unusually high dumping margin.

In *American Silicon Technologies v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court affirmed Commerce's adverse facts-available rate, noting that it bore a "rational relationship" to the respondent's "commercial practices," and was, therefore, relevant. As described above, in the pre-initiation stage of this investigation, we confirmed the calculation of margins in the Petition reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine the highest margin in the Petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts-available rate for Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje in this investigation, we have corroborated the adverse facts-available rate "to the extent practicable." See section 776(c) of the Tariff Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, "pursuant to the 'to the extent practicable' language \* \* \* the corroboration requirement itself is not mandatory when not feasible"). Therefore, we find that the estimated margin of 30.66 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to Dong-A Steel Pipe Co. Ltd.,

HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje, we have applied the margin rate of 30.66 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*, 72 FR at 40278.

#### Date of Sale

Section 351.401(i) of the Department's regulations states the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(I). The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 64 FR 38756, 38767 (July 19, 1999). Nexteel maintains the quantity is fixed on the date of shipment from its factory but that the price is only finalized when Nexteel issues the commercial and tax invoices. The issuance of commercial and tax invoices is frequently after shipment, but was not before shipment for any POI sales in both the home and U.S. markets. Therefore, Nexteel has reported the date of shipment from its factory as the date of sale under the field SALEDATH. See Nexteel's Section B response dated October 29, 2007, at pages B–14 to B–15. However, since the material terms of sale are not finalized until issuance of the commercial invoice, we have preliminarily determined to use date of invoice as the date of sale in both the home and U.S. markets. See Nexteel's supplemental Section B response dated December 26, 2007, at pages 17 to 18.

## Fair Value Comparisons

To determine whether sales of subject merchandise from Korea were made in the United States at less than NV, we compared the export price (EP) to the NV, as described in the *U.S. Price* and *Normal Value* sections below. In accordance with section 777A(d)(1) of the Tariff Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of EP.

## U.S. Price

For the price to the United States, we used EP in accordance with section 772(a) of the Tariff Act. Pursuant to section 772(a) of the Tariff Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price (CEP) was not otherwise warranted based on the facts on the record. Nexteel has no affiliate in the United States and reports all its sales as EP sales. See Nexteel's Section C response at page C-9. Nothing on the record indicates that Nexteel's U.S. market sales are CEP sales, so we did not use the CEP methodology. We based EP on the packed prices charged to the unaffiliated Korean trading companies (as Nexteel knew the merchandise it was selling to that trading company was destined for the United States). See Nexteel's Section A questionnaire response dated October 9, 2007, at page A-11; see also *Wonderful Chemical Industrial, Ltd., et al. v. United States*, 259 F. Supp. 2d 1273, 1279 (Ct. Intl. Trade 2003). There were no reported billing adjustments or duty drawback claims.

In accordance with section 772(c)(2) of the Tariff Act, we make deductions, where appropriate, for movement expenses including inland freight and brokerage expenses from plant to delivery. Due to the nature of Nexteel's U.S. sales (all were made to unaffiliated Korean trading companies who took possession at the Korean port), however, Nexteel had no expenses from plant to delivery other than transportation.

## Normal Value

### A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Nexteel's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise.

Pursuant to section 773(a)(1)(B)(ii)(II) of the Tariff Act, because Nexteel had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

## B. Arm's-Length Test

Nexteel reported sales of the foreign like product to affiliated customers. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, the sales were at "arm's length." See 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. *Id.* In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party would be excluded from the NV calculation. See 19 CFR 351.403(c) see also *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002), and memorandum from Mark Flessner, Case Analyst, to the file entitled, "Preliminary Determination of Sales at Less Than Fair Value of Light-Walled Rectangular Pipe and Tube from the Republic of Korea," dated January 23, 2008 (Analysis Memorandum). No such sales were excluded for Nexteel.

## C. Cost of Production Analysis

Based on our analysis of the Petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Nexteel's sales of light-walled rectangular pipe and tube in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a sales-below-cost investigation to determine whether Nexteel had sales that were made at prices below their respective COPs. See Cost Allegation Memorandum.

## 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Tariff Act, we calculated Nexteel's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses).

The Department relied upon Nexteel's COP and CV information from the company's submission dated January 10, 2008. To determine COP, the reported cost of manufacturing data (TOTCOM) were adjusted by incorporating G&A expenses and financial expenses based on Nexteel's financial statements, and included in Nexteel's section D response at Exhibits D-9 and D-10, respectively.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. Pursuant to section 773(b)(2)(c) of the Tariff Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at



prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test indicated that for certain Nexteel models, 20 percent or more of the home market sales volume (by weight) were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales in the calculation of NV.

#### D. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Korea. We adjusted the starting price for inland freight, warehouse expense, and warehouse revenue, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Tariff Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit and other direct selling expenses), where appropriate. See 19 CFR 351.410(c).

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b).

#### E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. See *Micron*

*Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). Nexteel reported sales through one LOT corresponding to two channels of distribution in the home market. In the U.S. market, Nexteel reported one LOT corresponding to one channel of distribution for the EP sales made through unaffiliated Korean trading companies (as stated above, there were no CEP sales during the POI). In our analysis, we determined that there is one LOT in the home market and one LOT in the U.S. market. Nexteel did not claim that there were differing LOTs in the home and U.S. markets. Our analysis of the various selling functions indicates no differing LOTs in the home and U.S. markets. See Nexteel's section A questionnaire response dated October 9, 2007, at Exhibit A-5; Nexteel's Selling Function Chart shows the same level of activity in each market for every function listed in this exhibit. We have therefore preliminarily determined that sales to the U.S. and home markets were made at the same LOT, and as a result, no LOT adjustment was warranted.

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### All-Others Rate

Section 735(c)(5)(B) of the Tariff Act states: "If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any

reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." Nexteel is the only respondent in this investigation for which the Department has calculated a company-specific rate. This rate, however, is *de minimis*. Nine remaining companies all received a margin based entirely on AFA under section 776 of the Tariff Act. One company, SeAH, will receive the all-others rate (*i.e.*, its rate was not calculated, as stated above). Therefore, for purposes of determining the all-others rate, because there are no other rates than *de minimis* or those based on AFA, we have reasonably determined to take a simple average of the AFA rate (30.66 percent) and the *de minimis* rate calculated for Nexteel (1.30 percent); therefore, 15.98 percent is the average to be assigned for the all-others rate, as referenced in the *Suspension of Liquidation* section, below.

#### Verification

As provided in section 782(i) of the Tariff Act, we intend to verify information upon which we will rely in making our final determination.

#### Preliminary Determination

We preliminarily determine the following weighted-average dumping margins exist for the period April 1, 2006 through March 31, 2007:

Producer/exporter	Weighted-average margin (percentage)
Nexteel Co., Ltd. ....	* 1.30
Dong-A Steel Pipe Co. Ltd. ..	30.66
HiSteel Co. Ltd. ....	30.66
Jinbang Steel Co. Ltd. ....	30.66
Joong Won .....	30.66
Miju Steel Mfg. Co., Ltd. ....	30.66
Yujin Steel Industry Co. ....	30.66
Ahshin Pipe & Tube .....	30.66
Han Gyu Rae Steel Co., Ltd. ....	30.66
Kukje Steel Co., Ltd. ....	30.66
SeAH Steel Corporation, Ltd. ....	15.98
All others .....	15.98

\* (*de minimis*).

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR pipe and tube from the Republic of Korea, with the exception of those produced by Nexteel Co., Ltd. and exported by Nexteel Co., Ltd. or either of the two exporters named in its questionnaire responses, that are

entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart above, as follows: (1) The rate for the firms listed above (except for Nexteel, *see* below) will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 15.98 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

In accordance with 19 CFR 351.204(e)(2), because the weighted-average margin for Nexteel is *de minimis*, we will instruct CBP not to suspend liquidation of merchandise produced by Nexteel Co., Ltd. and exported by Nexteel Co., Ltd. or either of the two exporters named in its questionnaire responses.

#### **Commission Notification**

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of light-walled rectangular pipe and tube from Korea are materially injuring, or threaten material injury to, the U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the Commission will make its final determination within 45 days of our final determination.

#### **Disclosure**

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties the calculations performed in this preliminary determination within five days of the date of the public announcement.

#### **Public Comment**

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited

to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Tariff Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and place to be determined. However, parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

#### **Postponement of Final Determination and Extension of Provisional Measures**

Pursuant to section 735(a)(2) of the Tariff Act, on January 3, 2008, Nexteel, which accounted for a significant proportion of exports of light-walled rectangular pipe and tube, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Nexteel requested that the Department extend by 60 days the application of the provisional measures. *See* Section 735(a)(2) of the Tariff Act and 19 CFR 351.210(e)(2). In accordance with section 733(d) of the Tariff Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and

(3) no compelling reasons for denial exist, we are granting Nexteel's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: January 23, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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