Department will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination.

At verification, we discovered numerous errors in the respondent's reported information. For example, the vast majority of the pre-selected and surprise sales contained discrepancies. While many of these errors may be corrected, the number of errors discovered draw into question the completeness and accurateness of respondent's remaining sales (*i.e.,* the sales not specifically reviewed at verification). Additionally, we discovered that the respondent did not report certain home market and U.S. sales and incorrectly reported the sales price for certain U.S. sales. Based on these errors and others discussed in the verification report, we find that the respondent's response is so incomplete that it cannot serve as a reliable basis for this determination. Because the information cannot be verified, section 776(a) requires us to use the facts otherwise available.

As facts available, we are basing the respondent's margin on the average margin calculated in the petition. We are using the petition rates because this is the only information on the record which could form the basis for a dumping margin (*see* ''Facts Available'' section above).

The respondent has been fully cooperative in the investigation, as noted above. Also, the errors discovered at verification do not indicate that the respondent withheld or misreported information to ''obtain a more favorable result.'' SAA at 870. Rather, some of the errors hurt the respondent while others helped it. Therefore, we have used the average margin contained in the petition, rather than the highest margin. The Department's practice has been to assign the highest margin contained in the petition only where the respondent was found to have been uncooperative. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Italy* (60 FR 33558, 33559, June 28, 1995).

Because we are basing our final determination on the facts available, all other interested party comments are moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of circular welded non-alloy steel pipe from South Africa, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after November 30, 1995, the date of publication of our preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price, as shown below. In accordance with section 733(d) of the Act, the suspension of liquidation based on the Department's preliminary determination may not remain in effect for more than six months (including the statutorily permissible extension). In accordance with this provision, the suspension of liquidation will remain in effect until May 28, 1996.

The weighted-average dumping margin is as follows:

Exporter/manufacturer	Weighted-average margin percentage
All exporters	117.66

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: May 6, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–11940 Filed 5–13–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–804]

Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania

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

EFFECTIVE DATE: May 14, 1996.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4162 or (202) 482–3464, respectively.

Applicable Statute

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

Final Determination

As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, the Department of Commerce (the Department) has exercised its discretion to toll all deadlines for the duration of the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 16, 1995, through January 6, 1996. Thus, the deadline for the final determination in this investigation has been extended by 28 days, *i.e.,* one day for each full or partial day the Department was closed. As such, the deadline for this final determination is no later than May 6, 1996.

We determine that circular welded non-alloy steel pipe (pipe) from Romania is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination of November 21, 1995 (60 FR 61529, November 30, 1995), the following events have occurred:

In February 23, 1996, the respondents, Tepro S.A. (Tepro) (the producer of the subject merchandise), Metagrimex S.A. (Metagrimex), Matalexportimport S.A. (Metalexportimport) and Metanef S.A. (Metanef) submitted additional publicly available published information (PAPI) pertaining to surrogate values. On March 1, 1996, the petitioners [1] commented on the respondents' PAPI.

In March 1996, we verified the questionnaire responses to Tepro, Metagrimex and Metalexportimport. The third exporter, Metanef, did not permit the Department to verify its questionnaire responses.

The petitioners and respondents submitted case and rebuttal briefs on April 12 and 17, 1996, respectively. Additional comments were requested by the Department and submitted by the petitioners and respondents on April 19 and 23, 1996, respectively.

Scope of Investigation

The following scope language reflects certain modifications from the notice of the preliminary determination. We clarified the paragraph beginning ''The scope specifically includes * * *'' for use and presumed use language.

For purpose of this investigation, circular welded non-alloy steel pipes (standard pipes) are all pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, bevelled end, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other) used in standard or structural pipe applications.

The scope specifically includes, but is not limited to, all pipe produced to the ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS–1387 specifications, regardless of use. It also includes any pipe multiple-stencilled or multiple-certified to one of the above-listed standard or structural pipe specifications and to any other specification, if used in a standard or structural pipe application. Pipe which meets the above physical parameters and which is produced to proprietary specifications, the API–5L, the API–5L X–42, or to any other non-listed specification is included within the scope of this investigation if used in a standard or structural pipe applicaion, regardless of the *Harmonized Tariff Schedule of the United States* (*HTSUS*) category into which it was classified. If the pipe does not meet any of the above identified ASTM or BS specifications (i.e., ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS–1387) or is multiple-Stencilled or multiple-certified to one of these specifications and to any other specification, although it is within the identified physical parameters described in the second paragraph of this section, our presumption is that it is not used in a standard pipe application.

Standard pipe uses include the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. Standard pipe uses also include load-bearing applications in construction and residential and industrial fence systems. Standard pipe uses also include shells for the production of finished conduit and pipe used for the production of scaffolding.

Specifically excluded from this investigation are mechanical tubing, tube and pipe hollows for redrawing, the finished electrical conduit if such products are not certified to ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS–1387 specifications and are not used in standard pipe applications. Additionally, pipe meeting the specifications for oil country tubular goods is not covered by the scope of this investigation, unless also certified to a listed standard pipe specification or used in a standard pipe application.

The merchandise under investigation is currently classifiable under items 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the *HTSUS*. Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Regarding implementation of the use provision of the scope of this investigation, and any order which may be issued in this investigation, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require use certification until such time as petitioner or other interested parties provide the Department with a reasonable basis to believe or suspect that substitution is occurring. Second, we will require use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that pipe produced to the API–5L specification is being used as standard pipe, we will require use certifications for imports of API–5L specification pipe. Third, normally we will require only the importer of record to certify to the use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Period of Investigation

The period of investigation (POI) is October 1, 1994, through March 31, 1995.

Facts Available

Pursuant to section 776 of the Act, the Department shall use the facts otherwise available if necessary information is not available on the record, or if an interested party or any other person withholds requested information, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition. In this case, Metanef refused the verification of its questionnaire responses. Therefore, since reliable information is not on the record, and Metanef has not acted to the best of its ability, the application of section 776(b) is warranted. As a result, we are basing adverse facts available for the Romania-wide rate, which covers Metanef, on the rate calculated for Metagrimex, which is

[1] Allied Tube & Conduit Corporation, Sawhill Tubular Division—Armco, Inc., LTV Steel Tubular Products Company, Sharon Tube Company, Laclede Steel Company, Wheatland Tube Company and Century Tube Corporation.

highest margin calculated and is higher than the rate contained in the petition.[2]

Separate Rates

As stated in our preliminary determination, Romania is a non-market economy (NME) country. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test articulated in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, 22586, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate cash deposit rates in nonmarket economy cases only if a respondent demonstrates the absence of both *de jure* and *de facto* governmental control over export activities.

The Department typically considers three factors which support, though do not require, a finding of *de jure* absence of central control. These factors include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. The Department typically 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 subject to the approval of a governmental authority; (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*).

1. Absence of De Jure Control

The two cooperating exporters of the subject merchandise in this investigation, Metagrimex and Metalexportimport, have provided their business licenses issued by the Romanian Chamber of Commerce and Industry. These exporters have stated that these licenses do not require renewal, do not impose any limitations on or create any entitlements for their operations, and can only be revoked by the issuing authorities if the requirements of the license are not fulfilled. The exporters also provided copies of several trade laws which they claim provide for the elimination of the state monopoly in the economy and foreign trade. During the verification of Metagrimex and Metalexportimport, we examined these exporters' business licenses, as well as the relevant trade laws. These documents supported the absence of *de jure* control claimed by these two exporters.

2. Absence of De Facto Control

These two exporters also asserted absence of governmental control based on all the *de facto* criteria. Specifically, they stated that: (1) They establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; and (3) there are no restrictions on the use of their export revenues and they make independent decisions regarding disposition of profits or financing of losses. During our verification of these two companies, we examined sales documentation, including correspondence and contracts with the customer, as well as bank accounts and profit allocation. These documents confirmed the accuracy of the above-referenced statements.

Concerning the fourth criterion that the respondent in question has autonomy from the government in making decisions regarding the selection of management, both Metagrimex and Metalexportimport stated that they had this autonomy. During our verification of Metagrimex, we examined the membership of its Council of Administration, which selects the management and is similar to a board of directors. Our examination confirmed that this council was independent of the Romanian government or agencies thereof, and therefore, Metagrimex was able to make its own management personnel decisions.

During our verification of Metalexportimport, we also examined the membership of its Council of Administration, which also selects the management and is similar to a board of directors. We confirmed that this council, which is made up of five members, only included one member appointed by the state ownership fund (SOF) and one member appointed by the private ownership fund (POF). The SOF and the POF were created by the Romanian government to help privatize Romanian companies. We thus confirmed that this council was independent of the Romanian government or agencies thereof, and therefore, Metalexportimport was able to make its own management personnel decisions.

Consequently, we determine that the information provided by Metalexportimport and Metagrimex supports our finding that there is *de jure* and *de facto* absence of governmental control of export functions. Therefore, these two companies have met the criteria for the application of separate rates.

Respondent Metanef provided information regarding separate rates in this investigation. However, because it refused verification, we could not verify its separate rate claim.

Fair Value Comparisons

To determine whether sales of pipe from Romania to the United States by Metagrimex and Metalexportimport were made at less than fair value, we compared Export Price (EP) to the Normal Value (NV), as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For both exporters, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and because constructed export price under section 772(b) is not otherwise warranted on the basis of the facts of this investigation.

For Metagrimex and Metalexportimport, we calculated EP based on packed, FOB Romania port prices to unaffiliated purchasers in the United States, as appropriate, based on the same methodologies described in the preliminary determination.

Normal Value

As stated in our preliminary determination, when the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Therefore, we calculated NV based on factors of production reported by Tepro, the sole producer of the subject merchandise. We made the following adjustments to the factors reported by Tepro based on our findings at verification.

[2] Because Metanef refused to have its questionnaire response verified, it is ineligible for consideration for a separate dumping margin. Accordingly, because Metanef is the only other exporter, the country-wide rate is being based on Metanef's rate (which is based on adverse facts available).

First, we used corrected wall thicknesses in matching steel coil to its surrogate value (*see* comment #5 in the ''Interested Party Comments'' section of this notice). Second, we adjusted lacquer, electricity, and thread protector factors for corrections found at verification. Third, since Tepro was unable to adequately support its claimed labor figures for pipe produced on production line 220, we disregarded the amount reported and used, as facts available, the highest verified direct labor input for the size of pipe on another verified line closest to the sizes produced on line 220 (as discussed below, indirect labor is included in the value for overhead) (*see* comment #9 in the ''Interested Party Comments'' section of this notice).

Valuation of Factors

For the final determination, we have calculated NV using Colombian and Thai prices to value Tepro's factors of production. We have multiplied the reported factor quantities by these values. Where we had information for Columbia, we used it as our primary surrogate. We have used data from Columbia because Colombia is the closest country to Romania in terms of economic development that is also a significant producer of the subject merchandise. Where we had no information for Colombia, we used Thailand as our secondary surrogate since Thailand is within the same per-capita income band of countries as Romania and Colombia and it is also a significant producer of the subject merchandise (*see* Comment #1 in the ''Interested Party Comments'' section of this notice). All values were adjusted for inflation, where appropriate.

To value hot rolled steel coil, the major material input, we again used the steel price list for sheet and coil sold to industrial users in Colombia published by Acerias Paz del Rio S.A., a Colombian producer of steel sheet and coil. To value saleable steel scrap, because we could find no Colombian PAPI, we used the percentage difference between steel coil and steel scrap from the 1994 Thai import statistics, contained in the *Foreign Trade Statistics of Thailand,* published by the Thai Customs Department (1994 Thai Import Statistics). For lacquer and marking paint, we used the basket category data for paints and varnishes for both of these factors reported in the 1994 Colombian import statistics, provided by the Instituto Colombiano de Comercia Exterior (1994 Colombian Import Statistics). For zinc, hydrochloric acid, zinc chloride and ammonium chloride, we used values in the 1994 Colombian Import Statistics. For saleable zinc scrap, because we could find no Colombian PAPI, we used the values in the 1994 Thailand Import Statistics.

To value unskilled and packing labor, we used the 1994 wage rate for the manufacturing sector published in the *Economic Guide for Investors* by the Colombian government. Since we cannot determine if the labor values in this case were for skilled or unskilled workers, we are following the method established in the *Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from the PRC* (61 FR 14057, March 29, 1996). In that investigation, we found no basis to assume the skill level of the surrogate value, nor did we have agreement among the parties regarding the skill level. Thus, we applied a single wage rate to all reported labor factors. Since we have the same situation here, we applied a single wage rate to unskilled and packing labor factors. Further, because this value was exclusive of benefits, we increased the amount reported to include benefits. As explained above, the value for overhead includes an amount for indirect labor. Thus, we did not value the factor for indirect labor.

To value electricity, we used electricity rates for Colombian industrial users published quarterly by the Latin America Energy Organization (Organizacion Latinoamericana de Energia, or OLADE). For methane, because we were unable to find a Colombian value, we used the value of natural gas because, according to the petitioners, it has substantially the same end use as methane. We based the surrogate value for natural gas on 1992 Colombian prices shown in a 1993 OLADE publication.

For the packing materials of cold rolled strip, PVC foil and thread protectors, because we could find no Colombian PAPI, we used the values in the 1994 Thailand Import Statistics.

We were unable to locate Colombian PAPI for overhead, selling, general and administrative (SG&A) expenses, and profit. Therefore, we used the values from the *Final Results of the 1992–93 Antidumping Duty Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand* (61 FR 1328, January 19, 1996) (*1992–93 Administrative Review*). The rate for overhead included an amount for indirect labor. Overhead was calculated as a factor of direct labor. SG&A expenses were calculated as a percentage of the sum of materials, labor and overhead.

We were also unable to locate Colombian PAPI for rail freight and foreign brokerage and handling. Thus, for rail freight, we used the rate contained in the *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania* (57 FR 42957, September 17, 1992) (*Steel Pipe I*). This information was obtained from *The Investment Environment in Thailand* for 1991. For foreign brokerage and handling, we used the rate contained in the public version of a questionnaire response submitted in the 1994 antidumping duty investigation of *Carbon Steel Butt Weld Pipe Fittings from Thailand* (60 FR 10552, February 27, 1995). We used the rate contained in the 1994 investigation because this figure was more recent than the foreign brokerage and handling rate contained in *Steel Pipe I,* which was based on an earlier Carbon Steel Butt Weld Pipe Fittings from Thailand investigation. For a complete analysis of surrogate values used in the calculation of NV, see the May 3, 1996, memorandum from the Team to Gary Taverman, Acting Director, Office of Antidumping Investigations.

Romania-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. As stated previously, Metanef has not established entitlement to a separate rate because of its refusal to have its questionnaire response verified. Therefore, it becomes the Romania-wide rate (for a further discussion of the NME rate, see the *Final Determination of Sales at Less than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996).

Verification

As provided in section 782(i) of the Act, we verified all information submitted (except that of Metanef) used in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents.

Interested Party Comments

Comment 1: Selection of Surrogate Countries

The petitioners state that any surrogate country used in this investigation should be a significant

producer of comparable merchandise. Since Colombia, Thailand and the United States are the only countries on the record which have been shown to be significant producers of the subject merchandise, the petitioners state that only surrogate data from these countries can be used in the final determination.

DOC Position

We agree with the petitioners. However, for the final determination, we have only used values from Colombia and Thailand because values were found for these two countries, making the use of U.S. values unnecessary.

Comment 2: Proposed Use of the Acerias Price List to Value Steel Coil

The respondents argue that the Department should not use the price list of Acerias Paz del Rio, S.A. (Acerias) to value steel in the final determination. The petitioners argue that respondents' assertions on this matter have, for the part, been rejected by the Department in its preliminary determination and that the Department should continue to use the price list to value steel in the final determination. The arguments presented by both sides have been classified into five main areas: (1) Whether the prices on the price list were aberrational; (2) whether the price list represents actual prices; (3) whether the Department's use of this list in the preliminary determination was predictable and fair; (4) whether the problems of Acerias have an impact on its prices; and (5) whether the Department's past practice allows for the use of the price list.

Regarding whether the price list was aberrational, the respondents argue that the Acerias prices are aberrational and conflict with the other values on the record and are, therefore, not reliable. The petitioners counter that the Acerias prices are not aberrational and fall squarely in the range of the prices: (1) Provided by the respondents when one increases these prices for the increase in world steel prices; and (2) from 12 countries provided by the petitioners.

Both parties then argue about whether the price list represents actual prices. The respondents argue that the Acerias price list does not represent actual prices. They then contend the following. First, the Department relied upon a vague affidavit provided by the petitioners to establish steel prices in the preliminary determination. In contract, the affidavit, provided by respondents shows that the price list does not represents actual prices. Second, Colombia pipe producers use imported steel. Therefore, the price list has no probative value. Third the petitioners have previously argued that a price list submitted by the respondents was inconsequential since ''it is widely known that virtually all steel purchasers receive substantial discounts from price lists.''

The petitioners counter that the Acerias price is publicly available published information which represents actual prices paid for steel coil in Colombia. The petitioners argue the following to support this contention. First, petitioners' affidavit was properly sworn and consularized and was not vague in any way. Second, the two affidavits submitted by the respondents to discredit the price list rely on broad generalizations and misdirection and are not proper affidavits. Third, the petitioner' previous statements regarding the applicability of steel price lists related to U.S. lists and therefore are of no relevance to the Acerias price list.

Both parties then argue whether the Department's use of this list in this investigation was predictable and fair. The respondents assert that the use of this price list violates the Department's own precepts that NME cases be accurate, fair and predictable. To support their assertion, they argue the following. First, during the last four years, the Department has developed a PAPI hierarchy that prefers import statistics. Second, in this case, the Romanians could not have anticipated that Colombia would be selected as the surrogate country. However, even if they would have relied on Colombia import statistics or world import statistics to help them predict probable surrogate values and establish a price structure for the U.S. market, not a price list dated seven months after the POI. Third, even the Departments *Notice of Proposed Rulemaking and Request for Public Comments* (16 FR 7308, February 27, 1996) states that prices observed in international markets may better serve the Department's goals of accuracy and fairness.

The petitioners counter that the selection of Colombia as a surrogate country was very predictable. First, the Department's policy has never required that the surrogate be a major exporter in the production of comparable merchandise. Second, the fact that the surrogate countries for Romania have changed over time is attributable to economic changes in Romania. Third, there is no fixed policy preference for import statistics over all other sources in NME cases. Fourth, the Department has been willing to use world prices only where the surrogate value that would have been selected under the traditional method is aberrational, which is not the case here.

Both parties then discussed whether the problems of Acerias have an impact on its prices. The respondents argue the following. First, Acerias is currently in bankruptcy and continues to suffer the effects of strikes which took place in 1994. The Department in a previous case refused to use the annual report of an Indian bearing producer for overhead because it too, was in bankruptcy (*Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof from the Peoples Republic of China (Tapered Roller Bearings) (*56 FR 67590, December 31, 1991)). Second, Acerias is not comparable to other world steel producers because it is not representative of modern steel companies.

The petitioners counter that the Acerias price list is not unreliable. unrepresentative or distortive. To support their position, the petitioners argue the following. First, respondents have failed to demonstrate any connection between Acerias financial difficulties and the notion that this caused Acerias to charge higher prices for its products. If any connection between financial problems and prices has been established, the record shows that Acerias had to charge lower prices for its products than it normally would have. Second, respondents' claim that Acerias' production is based on old technology is inconsequential because it does not refer to whether the technology relates to the production of hot-rolled coil and does not mention the fact that Acerias has made improvements to its infrastructure in the preceding years.

Finally, both parties discuss whether the Department's past practice allows for the use of the price list. The respondents contend that the Department's acceptance of an unverified price list contravenes the Department's policy on price lists. They argue that to use a price list, the Department requires that all sales be based on the price list, an accounting firm must certify that the company adheres to the price lists, and the price list must be contemporaneous, none of which is present here. The respondents then argue that the price list is not PAPI and should not be used.

The petitioners counter that respondent's characterization of the Department's practice with respect to price lists is incorrect. The further state that the documentation provided by the respondents relates only to the use of price lists as substitute for sale-by-sale reporting of actual transaction prices.

DOC Position

We agree with the petitioners, in part. We have used the Acerias price list to value steel coil but have not made an adjustment to this list for the price trend claimed by the petitioners (*see* also Comments #3 below). In this case we have used the Acerias price list because we feel that its is more appropriate to use actual prices of a producer of a material input in the primary surrogate country rather than import statistics. We believe that Acerias prices more closely represent prices a pipe producer in a comparable market economy country would pay for this input material. Furthermore, the use of the price list was found to be reasonable when analyzing the points (discussed below) raised by the interest parties. Therefore, it is our first choice for valuation purposes.

Regarding the issue of whether the prices on the price list are aberrational, we have compared the Acerias prices to (1) Colombian import statistics provided by the respondents; (2) Thailand import statistics; [3] and (3) Latin American export prices published in the *Metal Bulletin*. Where appropriate, prices were adjusted for inflation to make them POI prices. The results of this analysis showed that the prices on the Acerias price list were reasonably close in value to those comparators (for a complete discussion of this analysis, see the May 6, 1996, issues memorandum from the Team to Barbara R. Stafford, Deputy Assistant Secretary for Investigations).

Regarding the issue of whether the price list represents actual prices, we feel confident that the prices on Acerias' list are actual prices. The affidavit provided by the petitioners states that the price list (1) Is publicly available to any person who requests it; and (2) contains actual prices charged by Acerias to industrial users in Colombia. While these industrial users receive discounts for unfinished edges, quantity purchases, and prompt payment, these discounts are clearly identified on the price list and have been deducted from the prices used in our calculations. Thus, we have utilized actual prices paid by Acerias' customers in our margin calculations.

Regarding Tepro's affidavit, we believe that the price list describes adequately the type of steel. We agree with the petitioners that ''commercial quality'' adequately describes SAE 1010 grade or its equivalent which is used by pipe producers. Furthermore, it does not matter that Acerias may: (1) Not have sold the steel to Colombian pipe producers; (2) not have sold exclusively from the price list; or (3) have sold to large customers at discounts below those listed on the price list. None of these arguments explicitly disproves that Acerias sold steel coil using the prices on its price list to customers in Colombia. We have found no evidence that the prices in the price list are not actual prices; in contrast, we believe that petitioners' affidavit demonstrates that the list prices are, indeed, actual prices.

Regarding the issue of whether the Department's use of the Acerias list was predictable and fair, we note that Colombia was used in this investigation due to its per-capita GNP similarity with Romania and the fact that it is a significant producer of the subject merchandise. While the surrogate countries have changed over time because of the economic changes of Romania and other countries, the Department has utilized the same criteria for selecting surrogate countries. The Department selects surrogate countries based on the per-capita GNP rankings of all countries listed in the *World Development Report* published by the World Bank. Therefore, we believe the selection of Colombia as the surrogate country in this investigation was both predictable and fair. Furthermore, we disagree with the respondents that the Department has developed a PAPI hierarchy in which import statistics are preferred to surrogate values from a producer of the material input in the primary surrogate country. The Department does not have a hierarchy where import statistics are used. As explained above, in this case, publicly available surrogate values from a producer of the material input in the primary surrogate country have been found to be preferable over import statistics. Finally, the Department's *Notice of Proposed Rulemaking and Request for Public Comments* stated that international markets should only be used when data from a primary and/or secondary surrogate countries were not found to be appropriate, and not as the first choice.

Regarding the issue of whether the problems of Acerias have an impact on its prices, we do not believe that the respondents have adequately demonstrated any relationship between Acerias' financial difficulties and the steel coil prices charged by Acerias. There is nothing on the record which states that Acerias charged its customers higher prices than it normally would have due to its financial difficulties. In fact, one could argue that a cause of Acerias' negative financial state is a consequence of the lower than normal prices it charged its domestic customers. Furthermore, in *Tapered Roller Bearings*, the Department refused to use the Indian roller bearing producer's data because the auditor's report for this producer noted that the financial statements were not presented in accordance with the generally accepted accounting principles of India. In addition, there are conflicting arguments on the record regarding the age of the technology used by Acerias and its resultant level of efficiency. However, there is not information on the record which proves that the technology used by Acerias has had a marked impact on its prices.

Regarding the issue of whether the Department's past practice allows for the use of the price list, we disagree with the respondents. The conditions for using a price list described in the respondents' argument only apply when the price list is used as a substitute for sale-by-sale reporting of actual transaction prices in market economy cases.

Although we have used the Acerias price list to value steel coil in this investigation and have made an adjustment to the prices in this list for inflation, we have not made the additional adjustment to the prices for the price trend claimed by the petitioners. This additional adjustment was made in the preliminary determination. However, we have determined that, after a further review of the information on the record, this adjustment is not appropriate, as the information supplied by the petitioners to substantiate it was not specific to the Colombian domestic market, but was for Latin American export prices. We have determined that there is an insufficient link between domestic Colombian prices and average Latin American export prices and, therefore, we have denied this adjustment (for a further discussion of the Department's discussion of this issue, see the May 6, 1996, issues memorandum from the Team to Barbara R. Stafford, Deputy Assistant Secretary for Investigations).

Comment 3: Proposed Use of Colombian Import Statistics To Value Steel Coil

The respondents argue that the Colombian import statistics they provided are PAPI that should be used in the final determination. They also argue the following. First, the lowest import prices are the prices paid by large industrial users and should be used by the Department in this case to

[3] Thai import statistics are used for comparison purposes because: (1) Thailand is within the same per-capita income band of countries as Romania and Columbia; (2) Thailand is a large producer of the subject merchandise; and (3) steel import statistics were available from Thailand.

value steel coil. Second, the rationale contained in the Department's November 21, 1995, steel valuation memorandum (regarding thickness and grade) is no longer relevant. Thus, the respondents argue that the Department should use the Colombian import statistics to value steel. The respondents than state that only limited adjustments need to be made if the Colombian import prices are used.

The respondents also state that petitioners' evidence showing an increase in the prices of steel during January 1994 to March 1995 is largely anecdotal or based on Metal Bulletin spot prices. The respondents argue that the U.S. import data shows no such increase in the prices of steel during this time. Furthermore, if there was such an increase, the petitioners should have been able to provide their own invoices to substantiate this. Finally, since most companies keep inventories of key raw materials, a monthly spike in prices will not necessarily affect a large user as much as a user which buys sporadically.

The petitioners counter respondents' arguments with the following. First, respondents' claim that the lowest Columbian import prices reflect the prices paid by large industrial users is sheer speculation. Furthermore, the Department had many other reasons for rejecting respondents' arguments in the steel valuation memorandum than just thickness and grade. However, the petitioners argue that if the Department chooses to use the Colombian import statistics submitted by the respondents, certain adjustments need to be made.

Finally, the petitioners argue that the evidence of the steel price surge is not anecdotal nor based on spot prices but information contained in the *Metal Bulletin*. They contend that respondent's U.S. import statistics are useless to the Department because they provide country-specific information for only a handful of exporting countries and the totals are skewed by the inclusion of cheap imports from non-market economies such as Russia. They further contend that the information on the record does not allow the Department to identify the quantity or value of NME imports so that they may be excluded. Finally, the petitioners argue that the limited information in these import statistics seems to support petitioners' information regarding steel price trends.

DOC Position

We disagree with the respondents and have not selected the Colombian import statistics to value the steel coil. As stated above in our response to Comment #2, in this case we believe that the Acerias price list is preferable to the Colombian import statistics. Accordingly, the issue about how to adjust the Colombian import statistics is therefore moot.

Comment 4: Discount for Secondary Steel

Tepro argues that the Department's rejection of a discount for the purchase of secondary steel in the preliminary determination was unreasonable and should be corrected for the final determination. To support its claim, Tepro argues the following. First, the information Tepro provided for the preliminary determination should be sufficient to warrant an adjustment. Second, the Department has now verified Tepro's gross consumption and scrap rates. These rates do not support rejection of the discount. Third, qualitative differences impact price and Tepro's supplier sold its steel at a significant discount because of qualitative differences. Fourth, the Department itself has differentiated between ''first quality'' and ''second quality'' merchandise in the *Steel Trigger Price Mechanism Procedures Manual.* Fifth, the reluctance of the Department to grant a discount for secondary steel may be based on the fear that the precedent in this case would make the Department vulnerable in other cases to similar requests for discounts based on qualitative differences in merchandise. The last argument notwithstanding, the Department has the obligation to select surrogate values which are ''accurate and fair'' and thus, the discount should be granted.

Tepro also states that the information gained at the verification proved that it was entitled to this discount. This information included: (1) The statement by an official of Tepro's supplier at verification that the quality standards for sale of hot-rolled coil to Romania in general and Tepro in particular are significantly lower than those for export and the discount to Tepro was because of differences in quality; and (2) invoices which show that Tepro bought steel during the POI at prices lower than Romanian exports to the European Union (EU). Tepro also stated that the reason the verifiers did not see physical defects in the steel in Tepro's inventory is that this steel was of Russian origin and Tepro does not purchase secondary steel from its Russian supplier. Finally, Tepro argued that the only information on the record that conflicted with Tepro's secondary steel claim is the statement from an employee of one of the petitioners who, to Tepro's knowledge, had never been to Romania, never visited Tepro or its supplier, and had no knowledge of the production process employed by Tepro. Thus, the Department's decision is not supported by evidence on the record.

The petitioners counter that Tepro's claim that the secondary steel discount should again be rejected for the final determination. To support this contention, the petitioner argues first, that nothing has been submitted to the Department since the preliminary determination to warrant a different conclusion. In particular, Tepro's reported scrap rates have not changed, nor has Tepro rebutted the results of the metallurgical tests to which the Department referred. Second, no new documents were produced at verification to substantiate the claim that Tepro uses only secondary steel. The statement on the invoices observed at verification was that the steel was ''not designated for exports to the EU.'' Respondents' interpretation of this is not buttressed by any evidence on the record. Petitioners proffer that the restriction probably arises from export controls between the EU and eastern European countries or the desire of Romanian producers to avoid triggering an EU antidumping action. Furthermore, internal prices in an NME country are irrelevant to the Department's analysis because such prices are not established by market forces.

Third, respondents cannot state that the Department's reluctance to grant a discount is based on fear of the precedent that would set since they cannot speak for the Department, and the petitioners note that the Department has previously been receptive to adjustments for qualitative differences where they have been established by substantial evidence on the record. Fourth, the petitioners had more than one piece of evidence disputing respondents' claims; in fact, the metallurgical test not mentioned by the respondents was the piece of evidence most damaging to the respondents' argument. Finally, although the employee of one of the petitioners did not visit Tepro's plant, the Department verifiers did and found no evidence to support Tepro's claims.

DOC Position

We agree with the petitioners. Since the preliminary determination, the only additional information on the record regarding this issue is the discussion in the verification report and verification exhibits. Regarding the statement by Tepro's supplier at verification that it granted Tepro a discount because of differences in quality, we do not believe

that it would be appropriate to grant a price adjustment based on statements that were not supported by physical evidence. As explained in the preliminary determination, Tepro did not provide adequate documentation to support its claimed adjustment. The only new documentation gained at the verification were invoices that state that the merchandise is not designated for exports to the EU. As noted by the petitioners, this could have been for a variety of reasons. No evidence was provided which conclusively demonstrated that Tepro received a discount for buying steel that was of a lower quality or grade than standard steel.

Regarding Tepro's other points, we note the following. First, the scrap rates of Tepro, although verified, have not changed since the preliminary determination. Furthermore, although we agree with Tepro that qualitative differences may affect price and that the Department has discussed prime versus secondary quality merchandise in the past, this is irrelevant since no such qualitative differences have been established here. In addition, Tepro's claim that ''reluctance of the Department to grant a discount for secondary steel may be based on the fear that the precedent in this case would open up the Department in other cases to similar requests for discounts based on qualitative differences in merchandise'' is not accurate. As stated above, the Department has rejected this adjustment to price because there has been no evidence placed on the record which demonstrates that Tepro received a discount for buying steel that was of a lower quality or grade than standard steel. Finally, the metallurgical test submitted by the petitioners showed that the grade of steel used by Tepro was identical to the grade of steel used by U.S. and other world producers of the subject merchandise. As noted by the petitioners, this test was not rebutted by Tepro.

Comment 5: Prices for Different Steel Sizes Matched to Proper Pipe Sizes

The petitioners contend that the Department in certain instances incorrectly matched prices for different thicknesses of steel with the wrong pipe sizes. They argue that the coil thicknesses reported by Tepro are inconsistent with the steel thicknesses specified by ASTM A–53 grade with which Tepro claims to comply. They also state that prices for 3–4mm thick coil may be applied only to pipe that is 2″ diameter or smaller.

DOC Position

We agree with the petitioners and have corrected the wall thicknesses for those products that were incorrectly listed. Furthermore, we have used the corrected wall thicknesses in the matching to the surrogate value for steel coil.

Comment 6: Use of Steel Input Quantities Reported in the Questionnaire Response

The petitioners argue that since Tepro reported its theoretical steel weight figures instead of its actual steel weight figures, it should be subject to adverse facts available. They also state that, at a minimum, the Department should not adjust downward the reported amounts by the amount of the difference noted in the verification report.

DOC Position

Since the Department only had time at verification to examine the theoretical/actual weight difference for one pipe size, we do not believe that it would be appropriate to attempt to convert all weights from theoretical to actual for all pipe sizes based on the one size examined. Also, as noted in the verification report, the theoretical weight was greater than the actual weight for the one size examined. Therefore, we have made no adjustments to the theoretical weights listed and have accepted them for purposes of the final determination.

Comment 7: Steel Scrap

The petitioners argue that the steel scrap surrogate used in the preliminary determination is aberrational and must be reduced. To support its argument, the petitioners make the following points: (1) The tariff category used for scrap in 1991 was under- or over-inclusive; (2) the 1991 scrap/coil ratio in Thailand was completely unlike that of other markets; and (3) the scrap/coil ratio has changed dramatically since 1991. The petitioners state that the scrap value to coil value in other world markets was one-third to one-half the values used in the preliminary determination and argue that the Thai scrap/coil ratios are aberrational, as well as not being contemporaneous with the POI. Thus, the Department should instead use the average of three contemporaneous ratios calculated by the petitioners.

The respondents claim that if the Colombian import statistics are used to value steel, then they do not object to the use of a lower scrap price. The respondents state that, where possible, contemporaneous prices should be used.

DOC Position

We have obtained updated Thai import values for steel coil and steel scrap and are using these values to obtain a steel scrap ratio. These values are specific to the steel used in the production of steel pipe. These values are from the Thai Import Statistics, the same source that was used in the preliminary determination, but are based on the period from January to June, 1994, and thus, the resultant ratio from these figures is more contemporaneous with the POI than the ratio used in the preliminary determination. Therefore, any change in the scrap/coil ratio since 1991 has been incorporated into this new ratio. Regarding the argument that this ratio is aberrational, we found no other information on scrap ratios for Colombia, the primary surrogate country, or Thailand, the secondary surrogate country, which show that this rate is aberrational in the surrogate countries. Furthermore, we disagree with the petitioners that we should use an average of the three scrap ratios calculated by the petitioners as these ratios are from countries that are less appropriate surrogate countries than Thailand.

Comment 8: Other Raw Materials

In addition to hot-rolled coil, the respondents contend that the Department should use Colombian import statistics on the record to value zinc, zinc chloride, ammonium chloride, hydrochloric acid and paint.

DOC Position

We agree with the respondents that we should use Colombian import statistics now on the record to value these raw materials. Colombia is our first choice as a surrogate country and we have therefore used the import statistics to value these raw materials.

Comment 9: Direct and Indirect Labor Inputs for Line 220

The petitioners state that since Tepro could not substantiate its unit labor amounts reported for each size pipe produced on its production line 220, the Department should use facts available for direct and indirect labor inputs for all subject merchandise above three inches diameter. They argue that the methodology suggested at verification is untimely, unsubstantiated and unverified and that the statute and the Department's policies forbid the use of such information. They argue that the Department should use the higher of: (1) the highest reported direct and indirect labor input reported for pipe of other

sizes; or (2) the factor used in the petition for 4″ diameter pipe.

The respondents state that the Department should use the alternative methodology suggested by Tepro at verification in order to calculate labor factors for line 220.

DOC Position

We agree with the petitioners, in part. We do not believe that the methodology suggested by the respondents at verification is appropriate because it was calculated only for one month, and does not arrive at the actual labor hours on line 220 for that month. Thus, we believe that the use of facts available is appropriate. However, we do not agree with the petitioners on the selection of adverse facts available. Instead of using the highest reported labor input reported for pipe of other sizes, we believe that it is more appropriate to use the highest verified direct labor input for the size of pipe on another verified line closest to the sizes produced on line 220 and have done so. An amount for indirect labor was not added because indirect labor is included in the overhead amount.

Comment 10: Factory Overhead, SG&A Expenses and Profit

For SC&A expenses, the respondents state that the figure used in the preliminary determination is inappropriate because it is not contemporaneous with the POI. The respondents argue that the Department should use the SG&A figure from the *1994–95 Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand* (*1994–95 Administrative Review*) rather than the SG&A figure from the *1987–88 Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand* (*1987–88 Administrative Review*), which was used in the preliminary determination. The respondents also argued that the petitioners' proposed new SG&A figure, when one makes the proper adjustments, serves to underscore the unreasonableness of the data used in the preliminary determination.

For profit, the respondents argue the following. First, since the steel price selected by the Department is 30–40 percent higher than the steel price paid by Thai pipe producer Saha Thai Steel Pipe Co., Ltd. (Saha Thai) in the *1994–95 Administrative Review*, the Department cannot use such high raw material prices and then hypothesize that an eight percent profit could be obtained in Thailand, since U.S. import statistics confirm that Thai producers sell steel pipe at prices similar to that paid for Romanian pipe. Second, there are questions about how the profit was calculated in the *1992–93Administrative Review* and the profit amounts in the *1994–95 Administrative Review* contradict the profit figures proposed by the petitioners from the *1992–93 Administrative Review*. Third, the Department should rely upon what is knows about the Colombian steel industry to calculate profit. Information on the record suggests that all sectors of the Colombian steel industry are not profitable. Therefore, the Department should use a zero profit margin or petitioner's own profit margins.

The petitioners state that the values used in the preliminary determination for factory overhead, SG&A expenses and profit should also be used for the final determination. The petitioners argue that the information provided by respondents for these factors was submitted for the *1994–95 Administrative Review* which has not been completed. These factors are therefore based on questionnaire responses that may have been superseded by subsequent revisions and have not yet been determined to be reliable for the case in which they were originally filed. In addition,the excerpts themselves are also incomplete. The information used in the preliminary determination does not have these defects and should therefore be used in the final determination. Alternatively, the petitioner argue that the Department should use information from the *1992–93 Administrative Review*, the most recently completed administrative review. This record of this review contains publicly-ranged figures for SG&A expenses and profit for Saha Thai. The petitioners note that if the Department decides to use information from the *1994–95 Administrative Review*, it should use the most recent amendments or revisions to such data.

Regarding profit, the petitioners contend that respondents' suggestion that the Department use the Acerias profit should be rejected because although no objectionable connection has been established between Acerias' financial problems and its prices, there is definitely a connection between those problems and its profit.

DOC Position

We agree with the petitioners that the best information to use for overhead, SG&A expenses and profit for the final determination in this case are the futures from the most recently completed administrative review of *Circular Welded Carbon Steel Pipes and Tubes from Thailand*. In this case, the most recently completed review is the *1992–93 Administrative Review*. We believe that it is not appropriate to use figures from an uncompleted review since they may be altered as the case progresses. We are therefore using the public figures from the *1992–93 Administrative Review* for overhead and SG&A expenses.

For profit, since we are using actual public overhead and SG&A expense amounts, we believe that it is also appropriate to use the actual public profit figure listed in the *1992–93 Administrative Review*, not the eight percent figure used in the preliminary determination, and have done so.

Comment 11: Inland Freight

The petitioners argue that the Department should use in the final determination the costs incurred by Tepro in non-convertible currency for domestic inland freight. They state that where surrogate values are not available, the Department should use facts available based on data in the petition.

DOC Position

In asking that the Department use the costs incurred by Tepro in non-convertible currency for foreign inland freight, the petitioners failed to note that the Department applied a surrogate value for domestic inland freight in the preliminary determination. We have followed the same methodology for purposes of the final determination. The inland freight distance between Tepro and the Romanian port was reported by Tepro in its questionnaire response.

Comment 12: Brokerage

The respondents argue that the Department should use the brokerage figure for Saha Thai contained in the *1994–95 Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand* for purposes of the final determination.

DOC Position

We disagree with the respondents. As mentioned above (*see* Issue #12), we believe that it is appropriate not to use the figures from an uncompleted review where possible since these figures may be altered as the case progresses. We are therefore using the same public values we used in the final determination from *Carbon Steel Butt Weld Pipe Fittings from Thailand* to value foreign brokerage and handling.

Continuation of Suspension of Liquiation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of

circular welded non-alloy steel pipe from Romania, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. In accordance with section 733(d) of the Act, the suspension of liquidation based on the Department's preliminary determination may not remain in effect for more than six months (including the statutory permissible extension). In accordance with this provision, these suspension of liquidation instructions will remain in effect until May 28, 1996.

The weighted-average dumping margins are as follows:

Exporter	Weighted-average percentage margin
Metagrimex S.A	85.12
Metalexportimport S.A	77.61
Romanian-Wide Rate	85.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: May 6, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–11941 Filed 5–13–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–802]

Preliminary Results of Antidumping Duty Administrative Review; Gray Portland Cement and Clinker From Mexico

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

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

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of this merchandise to the United States during the period August 1, 1993, through July 31, 1994, and one firm, CEMEX, S.A. The results of this review indicate the existence of dumping margins for the period.

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

EFFECTIVE DATE: May 14, 1996.

FOR FURTHER INFORMATION CONTACT: Nathan Bartholomew or Donna Kinsella, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On August 3, 1994, the Department of Commerce (the Department) published in the Federal Register (58 FR 41239) a notice of ''Opportunity to Request Administrative Review'' for the August 1, 1993, through July 31, 1994, period of review (POR) of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the petitioners, the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Co. of California, Inc., requested a review for the afore-mentioned period. On September 16, 1994, the Department published a notice of ''Initiation of Antidumping Review'' (58 FR 51053). The Department is now conducting a review of this respondent pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. The written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Review

Section 773(a)(1)(A) of the Tariff Act and 19 CFR 353.46(a) provide that foreign market value (FMV) shall be based on the price at which ''such or similar merchandise'' is sold in the exporting country in the ''ordinary course of trade for home consumption.'' Section 771(15) of the Tariff Act defines ''ordinary course of trade'' as ''the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind'' (*see also* 19 CFR 353.46(b)).

In the second administrative review of this order CEMEX reported home market sales of Type I, Type II, and Type V cement. Following their receipt of this information, petitioners alleged that CEMEX's home market sales of Type II and Type V cement were outside the ordinary course of trade. *See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47254 (Sept. 8, 1993). Pursuant to this allegation, we compared CEMEX's home market sales of Type II and Type V cement with sales of similar merchandise (namely, Type I cement) in order to analyze certain factors regarding the nature of the sales of the different types of cement, including freight expenses and profit levels. *Id.* at 47255–56. Based on this comparison, and on other factors explained in our