sold resulting in a clerical error. We disagree with respondents' assertion that the issue of separate calculations by importer versus a uniform duty assessment rate is a ministerial error; it is a methodological issue.

Amended Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Imphy/Ugine-Savoie	8/5/93–12/31/94	14.15

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigations. See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France, (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

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

Dated: November 7, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–29241 Filed 11–14–96; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–821–803]

Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On July 29, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia). This notice of final results covers the review period of August 1, 1994 through July 31, 1995. This review covers one manufacturer, Berezniki Titanium-Magnesium Works (AVISMA), and two trading companies, Interlink Metals & Chemicals, Inc. (Interlink) and Cometals, Inc. (Cometals). We gave interested parties an opportunity to comment on the preliminary results. We received comments from AVISMA, Interlink, Cometals, and Titanium Metals Corporation (TIMET), a petitioner. A public hearing was held on September 11, 1996. Based on our analysis of these comments, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 15, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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

Background

On July 29, 1996, the Department published in the Federal Register (61 FR 39437) the preliminary results of the 1994–1995 administrative review of the antidumping finding on titanium sponge from Russia (33 FR 12138, August 28, 1968). This notice of final results covers the review period for August 1, 1994 through July 31, 1995, covering one manufacturer, AVISMA, and two trading companies, Interlink and Cometals.

On September 12, 1996, the Department requested that AVISMA provide the Harmonized System (HS) classified data from the United Nations Trade Commodity Statistics (UN Trade Statistics) for Brazil for all factors of production and by-products used to calculate normal value in the preliminary results. AVISMA provided this data on September 19, 1996.

The Department has conducted this review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS)

subheading 8108.10.50.10. The HTS item number is provided for convenience and Customs' purposes. The written description remains dispositive as to the scope of the product coverage.

The review period (POR) is August 1, 1994 through July 31, 1995, covering one manufacturer, AVISMA, and two trading companies, Interlink and Cometals.

Analysis of Comments Received

Comment 1: AVISMA and Interlink argue that, in order to value inputs and by-products for the calculation of normal value, the Department should use the six-digit Harmonized System (HS) classifications for the UN Trade Statistics instead of the Standard International Trade Classification (SITC) for the UN Trade Statistics, which was used in the preliminary results. AVISMA and Interlink claim that the HS-based trade data is more accurate, and the surrogate values would change significantly for vanadium oxychloride, copper powder, carbon electrodes, and chlorine. AVISMA states that it only provided HS-based data when it differed substantially from the SITC-based data, and, therefore, found no need to submit the HS-based data for the remaining inputs and by-products. By using the HS-based data, AVISMA and Interlink argue that the Department would not need to use basket categories for the materials in its normal value calculation.

TIMET argues that the Department should continue to use the SITC-classified UN data, which it used in the preliminary results. TIMET contends that where the SITC-based data helps the respondent, the respondent does not argue to change to the HS-based data, and vice versa. TIMET assumes that AVISMA did not argue for HS-based usage for all costs because it would not better its position.

Department's position: We agree with AVISMA and Interlink that, in order to ensure the most accurate valuation of factors, the HS-based classification system should be used when available. On balance, the more specific HS-based data is more appropriate than the broader SITC-classification system categories. While the Department will continue to select surrogate material values from one uniform database (*i.e.*, the UN Trade Statistics), when the value for the product is broken out more specifically using the same source but a different data set, it would be unreasonable for the Department not to choose the more specific value over basket amounts.

In order to obtain the complete listing of HS-based data for material inputs, on September 12, 1996, the Department requested the Brazilian HS-classified data from the UN Trade Statistics for all factors of production and by-products used to calculate normal value. See Department's letter to Berezniki Titanium-Magnesium Works (AVISMA), September 12, 1996. On September 19, 1996, AVISMA submitted to the Department HS-based data for all but four inputs, for which the appropriate HS-based classification was not apparent (*i.e.*, titanium turnings and steel sheet) or the HS-based data did not exist because there were no imports during the period (*i.e.*, argon and polyethylene bags). See Letter from Wilmer, Cutler & Pickering to the Department, September 19, 1996.

In applying the HS-based data set, because copper and aluminum were each divided into two HS-based categories for lamenar and non-lamenar characteristics, AVISMA argued that the Department should use the HS-based data for non-lamenar copper and aluminum, rather than the data for the lamenar categories. See *Id*. On October 4, 1996, we contacted the U.S. Geological Survey regarding the difference between lamenar and non-lamenar aluminum and copper. Lamenar aluminum or copper is shaped similar to flakes, and non-lamenar aluminum or copper is granular. See Memo to File Regarding Telephone Conversation with U.S. Geological Survey, October 4, 1996. Because the copper and aluminum used in producing titanium sponge are in powdered form, the copper and aluminum are more likely to be granular.

Therefore, we are using the HS-based data for non-lamenar copper and aluminum.

For the remaining inputs and by-products, we used the HS-based data when available. If the HS-based data was not clear or existent, we used the SITC-based data.

Comment 2: AVISMA and Interlink argue that the Brazilian rail freight rate, which was obtained from the U.S. Consulate in Belo Horizonte and used by the Department in the preliminary results, applies to small cargos being transported small distances. AVISMA stated that it transported some materials (especially ilmenite and anthracite) in large quantities over long distances. AVISMA and Interlink stated in their brief that the Department's use of the Consulate rate is inconsistent with the economics of titanium sponge production. As a result, AVISMA and Interlink contacted Rede Ferroviaria S.A. (RFFSA), the Brazilian federal railroad, to obtain rail rates over long distances for dolomite and similar ores in Central East and Southeast regions of Brazil for the 1994–1995 period. AVISMA argues that the RFFSA rates are more realistic because they demonstrate a declining average rate per ton per kilometer as the transport distance increases. In addition, AVISMA obtained similar rail rate information from tariff rates of Burlington Northern Santa Fe Railroad, to demonstrate that the U.S. rates are consistent with the RFFSA rail rates.

AVISMA argues that the RFFSA rates are more precise than the Consulate information and more accurate for determining what a producer in Brazil would pay to transport its merchandise.

AVISMA contends that the submitted RFFSA tables are representative of AVISMA's inputs and do not vary greatly among the commodities for which it supplied data.

TIMET argues that AVISMA provided piecemeal data for Brazilian freight rates similar to the piecemeal data provided for materials. TIMET claims that AVISMA only provided partial information which is favorable to it, rather than providing the entire data and allowing the Department to make its own decision. Therefore, TIMET argues that the Department must reject this data and continue to use the Brazilian freight rates provided by the Consulate.

Department's position: We agree with AVISMA that the Department should use the most accurate rail rates available. AVISMA stated that the RFFSA rates supplied by AVISMA are mileage-based, apply to several commodities similar to ilmenite and anthracite, and cover two large areas where most of the country's economic activity occurs. Given the limitations on the availability of publicly available published information on Brazilian rail rates, the rates that AVISMA provided from RFFSA provide a more accurate estimation of the rail rates paid in a surrogate country.

Because the Department is required to value the factors of production based on the best available information regarding values in a surrogate country, we have determined that the RFFSA rail rates are more accurate surrogates for the transportation rates for ilmenite and anthracite than the rates used in the preliminary results. See Section 773(c)(1) of the Act. In addition, the Department has stated its preference to use publicly available published information, rather than information from embassies or consulates, from the surrogate country to value any factors for which such information is available.

See Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058, 21062 (1982)(Comment 4).

Although petitioner contends that AVISMA is only providing piecemeal data for freight rates, the Department individually values each input from a surrogate country. If more accurate information exists on the record for a certain input, regardless of the party submitting the information, then it should be used in order to secure the most accurate value possible for that input. Therefore, we are using the RFFSA rail rates to compute transportation costs for ilmenite and anthracite.

Because these rail rates were established in July 1994, which is prior to the review period, we are adjusting these rail rates to reflect inflation through the POR using the wholesale price indices (WPI) published by the International Monetary Fund (IMF).

Comment 3: AVISMA argues that the selling, general, and administrative (SG&A) expense ratios used by the Department in the preliminary results are unadjusted for the effects of inflation. AVISMA argues that the Department should use the SG&A ratio provided by respondent (*i.e.,* 8.75 percent) or only use the SG&A ratio for one Brazilian company, RIMA Industrial, because its ratio is more representative of the costs that AVISMA would incur if valued in a market economy.

TIMET argues that the Department should continue to use the data submitted in the Silicon Metal from Brazil administrative reviews. TIMET contends that the percentages provided by AVISMA and Interlink do not report that they are adjusted for inflation. In addition, because the period for the Silicon Metal from Brazil review is almost identical to the review period for titanium sponge from Russia and the 1994 Brazilian financial statements used by the Department also coincide with the titanium sponge review period, TIMET argues that an adjustment for inflation is not required. However, if the Department decides to adjust for inflation, TIMET argues that any inflation-adjusted ratios should be calculated on the basis of Electrosilex and RIMA data, two of the respondents in the Silicon Metal from Brazil review, because they are reliably adjusted for inflation.

In addition, TIMET states that the Department should include the SG&A ratio from Electrosilex's financial statements, which was inadvertently excluded in the preliminary results, because a public version of its 1994 financial statements exists on the 1993–1994 Silicon Metal from Brazil administrative review record.

TIMET further asserts that the record does not prove that the data submitted by AVISMA and Interlink is more reliable than the audited and verified data submitted and used in the Silicon Metal from Brazil administrative reviews.

Department's position: We agree with TIMET that the record does not demonstrate that AVISMA's and Interlink's surrogate SG&A ratio information is more reliable; both sets of data are adjusted for inflation, according to the notes in the financial statements, and the SG&A ratio used in the preliminary results is derived from information that was utilized by the Department in its preliminary results for the Silicon Metal from Brazil reviews. See Preliminary Results of Antidumping Duty Administrative Review; Silicon Metal From Brazil, 61 FR 46779 (September 5, 1996). In addition, because we used 1994 financial statements from the Silicon Metal from Brazil review, which are contemporaneous with the review period of this case, an additional adjustment for inflation is not necessary.

In calculating the weighted-averaged SG&A ratio for the preliminary results from the companies reviewed in the Silicon Metal from Brazil review, Electrosilex's SG&A ratio was incorrectly omitted. Therefore, we are including the SG&A ratio of Electrosilex in our normal value calculations.

Comment 4: Cometals argues that nothing requires the Department to calculate separate cash deposit rates for Cometals and Interlink. Cometals contends that the locations of these entities in market economy countries are not sufficient grounds for the Department to automatically assign these companies separate rates. Cometals further contends that the statute directs the Department to assign a single cash deposit rate to future imports of AVISMA merchandise. Cometals states that under the Department's ''knowledge test,'' if AVISMA, the producer, knows the U.S. destination of its merchandise at the time of sale, Cometals and Interlink will not be acting as exporters, and it, therefore, would be inappropriate to assign Cometals and Interlink separate cash deposit rates from AVISMA (which could apply to sales in future review periods).

Cometals claims that, in the preliminary results, the Department did not address that AVISMA changed its marketing and distribution practices with its resellers at the beginning in May 1995. Because of these new practices, Cometals contends that AVISMA has control over pricing on its future sales of titanium sponge to the United States. Therefore, Cometals argues, all of these sales should be subject to the same cash deposit rate (citing Final Results of Antidumping Duty Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 56 FR 31692, 31699 (July 11, 1991); *Federal-Mogul Corp.* v. *United States,* 813 F.Supp. 856, 867 (CIT 1993); *Torrington Co.* v. *United States,* 44 F. 3d 1572, 1578 (Fed.Cir. 1995)). Cometals argues that Cometals and Interlink offered essentially the same prices and same products to customers. Cometals claims that, if the deposit rates are not equalized between Cometals and Interlink, Cometals will be forced out of the U.S. titanium sponge market.

However, in order to determine the single cash deposit rate for AVISMA, Cometals, and Interlink, Cometals argues that this rate should not be based on the ''country-wide'' rate. Cometals states that the ''country-wide'' rate is inappropriate because: (1) The rate was determined more than 10 years ago in the 1982–1983 administrative review; (2) the rate is based on factors of production data from Japan, and this review is based on surrogate information from Brazil; (3) the rate is not a rate established for AVISMA, but for another company (*i.e.,* Techsnabexport); and (4) AVISMA has demonstrated, in this review, *de jure* and *de facto* absence of government control over its operations and is entitled to a separate rate. Cometals suggests that the Department should calculate AVISMA's cash deposit rate based on either the weighted-average dumping margin on all reviewed entries by Cometals and Interlink during the POR or the weighted-average export price from AVISMA to its resellers during the review period as the facts available.

TIMET agrees with Cometals that the Department must establish a single cash deposit rate for all future entries of titanium sponge, after completion of this review, sold for export to the United States by AVISMA, Cometals, or Interlink. TIMET argues that any merchandise sold after May 1995 by AVISMA, Cometals, or Interlink is, in fact, an export sale to the United States by AVISMA. TIMET contends that a lack of a single cash deposit rate would allow any foreign producer or exporter to change its deposit rate by simply

hiring a new agent. However, TIMET argues that AVISMA's cash deposit rate should be the rate established in the most recent administrative review for AVISMA, because the statute requires that the existing cash deposit rate remain in effect until the Department completes a review of sales for export to the United States by that exporter.

AVISMA and Interlink argue that section 751(a)(2) of the Act requires the cash deposit for future shipments by an individual exporter to be set through a margin analysis of entries of that exporter's merchandise during the most recent administrative review. AVISMA and Interlink argue that once an exporter demonstrates that it is not dumping, the exporter is entitled to the presumption that its future exports will not be subject to dumping duties. AVISMA and Interlink argue that annual administrative reviews will determine whether that presumption was incorrect. In addition, AVISMA and Interlink argue that a cash deposit rate has never been affected by post-review period or end-of-the-review period developments, and the statement of the changed relationship between AVISMA and Interlink is only applicable to the 1994–1995 review period.

Department's position: We agree with AVISMA and Interlink. In calculating the dumping margin, Section 751(a)(2) of the Act states that the Department ''shall determine the normal value and export price (or constructed export price) of each entry of the subject merchandise, and the dumping margin for each such entry.'' With regard to assessment and cash deposit rates, section 751(a)(2)(C) states that this ''determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.'' For this review, we calculated margins for each exporter, on the basis of the calculated normal value and export price, and have used these margins as the basis for assessment and estimated cash deposit rates, in accordance with the statute, as stated above.

While the Department is not required to use the same method of calculation for assessment and cash deposit rates (as confirmed in the court cases cited by Cometals above), Cometals and TIMET have not demonstrated a basis for establishing a single cash deposit rate for AVISMA, Cometals and Interlink in this review and disregarding the distinct assessment rates applied to each of these firms. Cometals and TIMET argue that AVISMA changed its relationship with its resellers during the review period and, therefore, AVISMA will have control over the pricing of its future sales of the merchandise under review to the United States. Significantly, however, there are no sales during the review period made under this changed sales relationship; the evidence of record confirms that the only reported sales were made at a time when AVISMA did not have such control. Interlink and Cometals thus rely entirely on assertions of AVISMA's intent to change its practice. In the absence of any sales made under this new approach, however, the Department has no adequate means to verify that AVISMA will, in fact, rely on this new distribution approach in the future; it is, at best, a statement of future intent that can change. It is entirely plausible that AVISMA and its resellers will restructure that relationship in other ways and that sales in the next review will be based on some other distribution approach. As reviews fundamentally focus on our evaluation of sales during the period in question, we look to evidence of the manner in which actual sales were made as the strongest basis for our determination of marketing relationships. Accordingly, based on the actual sales reviewed, we find no reason to establish a single cash deposit rate for AVISMA, Interlink, and Cometals.

Further, in establishing AVISMA's cash deposit rate, we determined that, because AVISMA made no shipments to the United States during the review period, AVISMA's rate will remain the Russia country-wide rate. Although AVISMA made a separate rate claim, because there are no sales to the United States by AVISMA, we are not able to evaluate the company's separateness request.

We disagree with Cometals' contention that the Department, in the absence of shipments, is obligated to corroborate the country-wide rate that has been based, in earlier reviews, on facts available. Corroboration applies in cases where the Department has determined that a manufacturer/exporter should be assigned a dumping margin based on adverse facts available, as stated in section 776(b) in the Act. In this review, because AVISMA had no shipments during the review period, we are continuing to include AVISMA in the country-wide rate of 83.96 percent, the same rate that AVISMA has received in all prior administrative reviews of titanium sponge.

Comment 5: Because the Department compared certain stockpile merchandise sold to the United States with a normal value based on AVISMA's current production, Cometals claims that the dumping margins were artificially increased. To account for the physical differences in the material due to aging and deterioration, Cometals argues that the Department should adjust for differences in merchandise (difmer). Cometals contends that this adjustment should be made because there is a clear price differential between fresh and stockpiled titanium sponge, and the presence of stockpile material in the world market is only a temporary situation that reflects Russia's transition to a market economy. Cometals suggests that the Department can determine the difmer adjustment by comparing the weighted-average prices of stockpile and fresh titanium sponge submitted by Cometals.

TIMET argues that the Department's practice is to make allowances for differences in merchandise based on the cost of production (COP), not on differences in market value, as proposed by Cometals. However, TIMET argues that Cometals has not submitted any information regarding differences between the COP of stockpile and fresh titanium sponge nor any information on the physical differences between stockpile and fresh titanium sponge and the rate at which such deterioration is occurring. Also, TIMET contends that Cometals has had ample time to request a difmer adjustment and provide the information to the Department. For these reasons, TIMET argues that a difmer adjustment should not be granted. However, if the Department determines to make a difmer adjustment for stockpile material, TIMET argues that storage costs must be added to normal value before a difmer adjustment may be deducted.

Department's position: We agree with TIMET that a difmer adjustment should not be granted based on the price differential between stockpiled and newly-produced merchandise. This practice is consistent with the treatment of stockpiled material in the final determination of sales at less than fair value for magnesium from Russia. See March 22, 1996 Calculation Memorandum (Public Version) for the Final Antidumping Duty LTFV Determination on Pure Magnesium and Alloy Magnesium from the Russian Federation, A–821–805, at 6. Moreover, normal value is calculated based on the factors of production used to produce titanium sponge valued in a surrogate country. There is no information on the record which would indicate that the stockpiled titanium sponge is physically different from newly-produced titanium sponge, or that the stockpiled merchandise is subject to a different production process than that of the newly-produced titanium sponge.

Therefore, because the production costs for these items were the same, we assigned the same normal value for the stockpiled and newly-produced material.

Comment 6: Cometals contends that the Department erred in deducting foreign inland freight to Cometals' warehouse and Russian brokerage expenses in the calculation of Cometals' export price, because they were incurred by Cometals' supplier rather than by Cometals.

TIMET explains that the statute requires that export price be reduced by charges incident in bringing the merchandise from the ''original place of shipment in the exporting country'' to the United States. However, TIMET argues that if the home market country is a NME, the Department compares the export price to normal value based on the factors of production. TIMET contends that certain adjustments are made to the export price to reach an ''ex-factory'' price to be compared to normal value. If the Department does not deduct the referenced movement expenses from export price, TIMET argues that the Department has not calculated an ''ex-factory'' price and has overstated the U.S. price.

Department's position: We agree with Cometals that adjustments for the foreign inland freight to Cometals' warehouse and Russian brokerage expenses should not be deducted from the export price. Section 772(c)(2)(A) of the Act states that export price shall be reduced by the expenses ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' When a reseller, not the producer, is considered the exporter, the ''original place of shipment'' is the point from which the reseller shipped the merchandise. In this review, we consider the ''original place of shipment'' to be the locations of Cometals' or Interlink's warehouses. Therefore, we are only deducting those movement expenses from export price which were incurred from the resellers' warehouses to the U.S. customer.

However, the antidumping statute requires an ''apples-to-apples'' comparison. See *Torrington Co.* v. *United States*, 66 F.3d 1347, 1352 (Fed.Cir. 1995). Therefore, in order to calculate normal value at the same point of shipment, we are including in normal value an amount for the inland freight from the producer to the resellers' warehouses and for Russian brokerage. This calculation is in accordance with section 773(c)(1) of the Act, which provides that the normal value will be based on, among other things, the ''cost of containers, coverings, and *other expenses*'' (emphasis added). It is necessary to include these expenses for bringing the subject merchandise to the resellers' warehouses to calculate the normal value at the original places of shipment.

Comment 7: TIMET argues that the Department should inquire whether Interlink has antidumping duty reimbursement (rebate) arrangements with its customers.

Department's position: It has been our consistent policy that evidence of reimbursement is necessary before we can consider making an adjustment to U.S. price. As there is no evidence on the record that Interlink reimbursed customers for antidumping duties in this review, it is not appropriate to include this factor in our calculation. At the time of liquidation, the U.S. Customs Service will require the importer to certify that it has not entered into any agreement with the exporter or producer to be reimbursed for antidumping duties. If any reimbursement is uncovered, it will be handled as our regulations instruct under 19 CFR 353.26 at that time.

Comment 8: TIMET argues that the Department must adjust U.S. price for export taxes, in accordance with the statute and regulations. According to TIMET, the calculation of U.S. price is not affected by the fact that these taxes are paid in an NME country. TIMET contends that nothing in the statute allows the Department to ignore export taxes, because the taxes are direct selling expenses, and the failure to deduct such direct selling expenses does not allow a valid comparison of ex-factory prices.

AVISMA and Interlink argue that export taxes should not be deducted because: (1) AVISMA did not pay export taxes on exports to the United States during the review period; (2) Cometals and Interlink were the exporters and neither company paid an export tax; (3) Russian export taxes are not included and have no effect on the export prices; and (4) the export tax paid by an NME producer to its government does not represent a ''real cost,'' and, therefore, should not be deducted.

Department's position: We agree with AVISMA and Interlink. Section 772(c)(2)(B) of the Act states that the Department shall reduce export price by ''the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States.'' For purposes of this review, Interlink and Cometals, not AVISMA, are the exporters of the merchandise. In the export price transactions between Interlink/Cometals and its customer in the United States, neither Interlink nor Cometals incurred export taxes as defined by section 772(c)(2)(B).

Moreover, the Department has determined that it is not required to deduct export tax payments made between a NME producer and its NME government, pursuant to section 772(c)(2)(B) of Act. Section 772(c)(2)(B) provides that export taxes are to be deducted only if they (1) are paid on exports to the United States and (2) included in the export price of the merchandise under investigation. In a NME, the Department has no basis for determining that a tax payment from the producer to the government is included in the price. The statutory treatment of NMEs—as seen in sections 771(18), 773(c), the legislative history, and applicable judicial rulings—reflects the fact that cost and pricing structures in a NME are inherently unreliable. Russia's designation as a NME obligates the Department to reject NME values, substituting instead the ''surrogate'' factor prices and costs identified in comparable market economy countries. A NME-imposed export tax, however, cannot be valued in this fashion, and to make a deduction for the export tax amounts would unreasonably isolate one part of the web of transactions between government and producer. See Pure and Alloy Magnesium from the Russian Federation, 60 FR 16,440, 16,448 (1995)(comment 10). An export tax charged for one purpose may be offset by government transfers provided for another purpose. In such circumstances, the Department has no basis for determining whether and to what extent a tax might be reflected in a price. This is the very type of internal NME transfer that the statute directs the Department to reject.

Comment 9: TIMET argues that the Department should use the average of electricity prices provided by the Brazilian Regional Commission for Electrical Integration, rather than the Brazilian prices provided by AVISMA, which allegedly do not include all appropriate charges and are not representative of the entire country. TIMET argues that electricity prices in Brazil should include the following four components: (1) Demand charges; (2) consumption charges; (3) tax; and (4) premium charges, if applicable. TIMET argues that it is unclear whether the electricity rate used by the Department includes these components. Moreover, TIMET contends that Electrobras, the source that the Department used for electricity rates, accounts for less than 50 percent of the electricity in Brazil.

TIMET further contends that there is no indication that the rates used by the Department are average prices from Electrobras.

If the Department decides to apply the Electrobras rate, TIMET argues that the Department should use the A2 Electrobras rate, which, TIMET claims, most industrial users in Brazil receive. TIMET points to the lack of evidence on the record justifying the use of the A1 rate. To qualify for the A1 rate, TIMET claims that a user must meet certain consumption standards and have a 230-kilovolt (kV) system. Whereas AVISMA's consumption of electricity meets the required standard, there is no evidence on the record that AVISMA has a 230-kV system. TIMET argues that the AVISMA plant was built in an economic system where electricity was ''free'' and AVISMA, therefore, had no incentive to reduce costs by locating near a 230-kV system.

AVISMA argues that because it was found to be entitled to the A1 rate in the magnesium investigation, AVISMA necessarily qualifies for the A1 rate in titanium sponge production because titanium sponge production is more energy-intensive than magnesium production. In fact, AVISMA contends, Brazil was selected as a surrogate in the magnesium investigation because it has a large energy-intensive aluminum producing sector. According to AVISMA, TIMET's argument ''contradicts the economics of titanium sponge production.'' Although TIMET argues that only a small number of users receive the A1 rate in Brazil, AVISMA contends that it would take advantage of the 230 kV lines if it were located in Brazil given the economics of production. Therefore, AVISMA asserts that it would therefore qualify for the A1, rather than the A2, electricity rate.

AVISMA also argues that the Electrobras prices for the review period are actual average prices, taken from actual monthly bills incurred by each class of users supplied by Electrobras, as discussed in the magnesium investigation. AVISMA argues that the Electrobras price data is representative because it is a holding company for Brazil's federal government and accounts for nearly 60 percent of Brazil's installed generation capacity. AVISMA also explains that Electrobras accounts for 66 percent of all transmission lines in Brazil in voltages of 230 kV or higher. Furthermore, AVISMA argues that TIMET's electricity price is flawed because it is not a weighted average, is not restricted to the largest users of electricity, and has nothing to do with actual prices paid for electricity in Brazil.

With regard to electricity taxes, AVISMA argues that there is sufficient Departmental precedent for using a tax-exclusive electricity price because the Department does not want to confuse the price to the producer with the overlay of governmental activity in the exporting country.

Department's position: We agree with AVISMA that the A1 Electrobras rate is the appropriate electricity rate to use for AVISMA in this review. The evidence on the record indicates that Electrobras electricity prices are representative of the electricity prices charged in Brazil and that the prices include the applicable demand and consumption charges cited by TIMET. With regard to the treatment of taxes in surrogate prices, the Department's practice is to value each factor of production, where possible, with publicly available published information which is tax-exclusive. See Preliminary Results of Antidumping Duty Administrative Review; Sebacic Acid from the People's Republic of China, 61 FR 46440, 46442 (September 3, 1996). Therefore, we believe the use of the Electrobras rate is consistent with Departmental policy.

With regard to which Electrobras rate to apply, the Court of International Trade (CIT) upheld the Department's decision to apply the A1 Electrobras rate to AVISMA for purposes of the final determinations of sales of less than fair value for pure magnesium and alloy magnesium from the Russian Federation. See *Magnesium Corp. of America, et al.*, v. *U.S.*, Slip Op. 96–148 (August 27, 1996). The CIT determined that the record indicated that the magnesium industry required enough electricity to qualify for the lowest rate, A1. The CIT stated that, ''(b)ased on the evidence on the record, it is reasonable to conclude that magnesium producers use electricity at the lowest rate available,'' given that electricity constitutes a large portion of the costs incurred in the production of magnesium. See Id., at 18. In addition, the CIT also determined that the record evidence demonstrated that a planned magnesium investment in Brazil would have an energy line of 230 kV. See Id.

For the preliminary results, we calculated the number of kilowatt hours needed to produce one metric ton, based on verified figures. The calculation demonstrated that AVISMA's kilowatt capacity was significantly higher than the minimum necessary to receive the A1 rate. In addition, because AVISMA produces both titanium sponge and magnesium at its production facility, it would be reasonable to assume that total magnesium/titanium sponge production would require an even greater demand for electricity than what is required for only the magnesium production. Therefore, based on the evidence on the record, we determined that it is reasonable to apply the A1 Electrobras rate as a surrogate electricity value for AVISMA.

Comment 10: TIMET contends that the Department erroneously adjusted normal value for by-products of magnesium production (*i.e.*, magnesium chloride and KAMA compound). In addition, TIMET argues that AVISMA did not prove that it made sales of its by-products because these actual sales were not submitted on the record. Therefore, the Department cannot assume that these sales were made and cannot adjust for the by-products. See Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less Than Fair Value, 51 FR 8324, 8329 (March 17, 1987).

AVISMA argues that magnesium is an input in producing titanium sponge. Accordingly, AVISMA included the costs in producing magnesium, such as energy consumption, as a part of the build-up of costs for producing titanium sponge. Therefore, AVISMA contends that all of the by-products reported, including those resulting from magnesium production, were related to the titanium sponge production. AVISMA argues that the Department verified that magnesium chloride qualifies as a by-product. AVISMA also argues that KAMA compound is produced in electrolyzers, which are dedicated to producing magnesium for titanium sponge production. In addition, AVISMA argues that the Department's spot-checking of by-products at verification provides the Department with the information necessary to confirm the validity of AVISMA's by-product claims.

Department's position: We agree with AVISMA. With regard to the verification of the by-product sales, in the Department's initial questionnaire, we only requested that AVISMA report the amount of by-products produced per unit of subject merchandise. See Department's Request for Information, September 20, 1995, at D–6. In order to verify the amount of by-products reported by AVISMA, we requested that AVISMA provide proof of sales and requested that AVISMA demonstrate, through a trace of its accounting books, its factor calculations for selected by-products. No discrepancies were found. See AVISMA's verification report, July 10, 1996, at 11.

With regard to the inclusion of by-products from magnesium production in the calculation of normal value for purposes of the titanium sponge review,

we agree with AVISMA that these by-products should be used to offset the cost of manufacturing for titanium sponge production. AVISMA produces magnesium specifically for its own consumption in titanium sponge production as well as for commercial sale. See AVISMA's Supplemental Questionnaire Response, March 26, 1996, at Attachment 9. Therefore, a portion of the magnesium production flows directly into the titanium sponge production. Because of this, AVISMA reported the inputs to produce magnesium as inputs for titanium sponge production, and the Department valued these factors to compute normal value in order to be reflective of AVISMA's actual production process. Because these by-products result from the actual production of titanium sponge, they are factors whose value must be taken into account in our calculation of the normal value. See Final Determination of Sales of Less Than Fair Value; Pure Magnesium from Ukraine, 60 FR 16432, 16435 (March 30, 1995), Comment 6. Therefore, we are continuing to grant an offset for those by-products which directly result from the production of titanium sponge.

Comment 11: When valuing costs for by-products, TIMET argues that the Department should adjust the UN Trade Statistics data downward for profit in order to value the by-products by cost, not sales.

AVISMA argues that the Department's policy is to use sales value, not COP, when valuing by-product offsets. See Final Results of Silicon Metal from Argentina (59 FR 65336, 65340 (December 14, 1993)), Final Determination of Sebacic Acid from PRC (59 FR 28053, 28056 (May 31, 1994)), and Final Determination of Coumarin from PRC (59 FR 66895, 66900 (December 28, 1994)).

Department's position: We agree with AVISMA. The Department's practice is to value by-product offsets using import values as surrogates for the ex-factory, freight-exclusive prices from suppliers to consumers because we believe this is the best estimate for the market values of the by-products in this case. See Magnesium Final Determination, Comment 5, at 16447; Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19027, 19030 (April 30, 1996). Accordingly, we have continued to value by-product offsets using the import prices provided in the UN Trade Statistics.

Comment 12: TIMET argues that the Department must exclude AVISMA's claimed by-product deduction for copper melt from its calculation of normal value. TIMET contends that the copper melt by-product is new information presented at the verification, and, therefore, the Department is not allowed to accept such untimely information.

AVISMA argues that the copper melt by-product claim was presented as a minor revision on the first day of verification. See AVISMA's Verification Exhibits, July 10, 1996, Exhibit A–1.

Department's position: We agree with TIMET. The Department's regulations at 19 CFR 353.31(a)(ii) allows parties to submit factual information for consideration until the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review. The Department accepts new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. Consistent with our practice, the Department does not consider AVISMA's copper melt by-product claim at verification as acceptable new information. In addition, AVISMA did not alert the Department that it had included a previously unreported by-product in the minor corrections presented at verification. Therefore, the Department is revising its calculation of normal value to exclude the by-product offset for copper melt.

Comment 13: Given the hyperinflation in Brazil, TIMET argues that in calculating normal value, the Department should account for the effects of inflation on the input pricing data which was originally reported in U.S. dollars.

AVISMA argues that it would be impossible for the Department to properly account for variables such as exchange rates and currency reform. Further, AVISMA notes that once an input is priced in U.S. dollars, the inflation rate in Brazil becomes irrelevant.

Department's position: We agree with AVISMA. It is not necessary or appropriate to make adjustments to these U.S. dollar values for Brazilian inflation. Moreover, because we do not know the dates or exchange rates used to convert these values into dollars, we could not determine any such adjustment. In addition, because the data contained in the UN Trade Statistics is nearly contemporaneous with the review period, the effect of any dollar inflation adjustment would likely be small. See Magnesium Final Determination, Comment 16, at 16449.

Comment 14: At verification, AVISMA stated that it routinely discards the source documentation for its material flow ledgers after three months. TIMET argues that the Department should instruct AVISMA not to discard this documentation for future verifications.

AVISMA states that it is now aware of the importance of maintaining the source documentation for its material flow ledgers, and has no problem with the suggestion.

Department's position: We agree with TIMET and advise AVISMA to maintain the source documentation for its material flow ledgers for purposes of verification.

Final Results of Review

As a result of the comments received, we have revised our preliminary results and determine that the following margins exist:

Manufacturer/ exporter	Review period	Margin (percent)
Russia-wide rate	8/1/94–7/31/95	83.96
Cometals, Inc.	8/1/94–7/31/95	28.31
Interlink Metals & Chemicals	8/1/94–7/31/95	0.00

The Department shall determine, and the US Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of titanium sponge from Russia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for merchandise manufactured and exported to the United States by AVISMA will be the Russia-wide rate established in these final results of review; (2) the cash deposit rates for merchandise manufactured by AVISMA and exported to the United States by Interlink or Cometals will be those rates established for Interlink or Cometals in these final results of review; (3) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review and have a separate rate, the cash deposit

rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (4) for Russian manufacturers or exporters not covered in the LTFV investigation or in this or prior administrative reviews, the cash deposit rate will continue to be the Russia-wide rate; and (5) the cash deposit rate for non-Russian exporters of subject merchandise from Russia that were not covered in the LTFV investigation or in this or prior administrative reviews will be the rate applicable to the Russian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this review of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: November 8, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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North American Free Trade Agreement Article 1904 Binational Panel Reviews: Applications of Individuals To Serve on Binational Dispute Settlement Panels for Review of Antidumping and Countervailing Duty Matters

AGENCY: Department of Commerce, International Trade Administration, NAFTA Secretariat, U.S. Section.

ACTION: Invitation for applications from U.S. candidates for nomination to the roster of persons eligible to serve on binational panels convened to review antidumping and countervailing duty matters under Chapter 19 of the North American Free Trade Agreement.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals, unaffiliated with the U.S., Canadian or Mexican Governments, who are willing to serve on binational panels convened to review: (1) Final determinations in U.S., Canadian or Mexican antidumping or countervailing duty (AD/CVD) proceedings involving imports from other countries party to NAFTA; and (2) amendments to a NAFTA Party's antidumping or countervailing duty statutes. This notice invites applications from U.S. citizens wishing to be considered for inclusion on the roster of candidates eligible to be selected to serve on such panels and summarizes eligibility criteria for roster members and panelists.

DATES: Eligible citizens are encouraged to apply by November 22, 1996 to be considered for nomination to the roster in January 1997.

FOR FURTHER INFORMATION CONTACT: For further information concerning the form of the application, contact Sybia Harrison, Legal Assistant, Office of the General Counsel, Office of the U.S. Trade Representative (USTR) at (202) 395–3432. For information concerning Chapter 19 or the duties involved, contact Amelia Porges, Senior Counsel for Dispute Settlement, USTR, (202) 395–7305, or James R. Holbein, U.S. Secretary, NAFTA Secretariat (202) 482–5438.

SUPPLEMENTARY INFORMATION:

(1) Review of AD/CVD Determinations

Chapter 19 of NAFTA does not affect the right of NAFTA Parties (Canada, Mexico and the United States) to impose antidumping or countervailing duties in accordance with their national laws, including against products of other NAFTA Parties. Final administrative determinations under those laws are subject to review by binational panels, rather than by national courts, if requested by an appropriate U.S., Canadian or Mexican party to the proceeding, to the extent that such determinations involve products of a NAFTA Party. Binational panels decide whether such determinations are in accordance with the relevant national law, using the standard of review that would have been applied by a national court in such circumstances. A panel may uphold the determination or remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a binational ''Extraordinary Challenge Committee'' composed of current and former judges. The United States, Canada and Mexico are obligated under Chapter 19 to give effect to final panel decisions.

(2) Review of Amendments to AD/CVD Statutes

Chapter 19 also provides that at the request of the United States, Canada or Mexico, a binational panel will review and issue a declaratory opinion concerning whether an amendment to another NAFTA Party's AD/CVD statues made after entry into force of the NAFTA is inconsistent with the provisions of the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, any successor agreements to which all three Parties are a party, or the object and purposes of the NAFTA.

Composition of Panels

Chapter 19 provides for the development of a roster of at least 75 potential panelists, with each government selecting at least 25 individuals. A separate five-person panel will be formed for each review of an AD/CVD administrative determination or statutory amendment. To form a panel, the two governments involved will each appoint two panelists, normally by drawing upon individuals from the roster. If the governments cannot agree upon the fifth panelist, they will decide by lot which of them shall select the fifth panelist from the roster. The majority of individuals on each panel must be lawyers in good standing, and the chair of the panel must be a lawyer.

Criteria for Eligibility

Chapter 19 sets out a number of criteria for determining the eligibility of individuals to be included on the roster. Roster members must be U.S., Canadian or Mexican citizens, and must be of good character and of high standing and repute. They are to be chosen strictly on the basis of their objectivity, reliability, sound judgment and general familiarity with international trade law. Panelists may not be affiliated with any of the three governments.

Judges and retired judges are particulary encouraged to appy.