DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–820]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

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

SUMMARY: On September 9, 1997, the Department of Commerce (''the Department'') published the preliminary results of its 1995–96 administrative review of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany (62 FR 47446). This review covers one manufacturer/exporter of the subject merchandise, Mannesmannroehren-Werke AG (''MRW''), and Mannesmann Pipe & Steel Corporation (''MPS'') (collectively ''Mannesmann''), for the period January 27, 1995 through July 31, 1996.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Hollie Mance, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0196 or 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the **Federal Register** the preliminary results of the 1995–96 review (62 FR 47446) of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany (60 FR 39704; August 3, 1995).

Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On December 31, 1997, the Department extended the time limits for the final results in this case. See Extension of Time Limit for Antidumping Duty Administrative Reviews (62 FR 68258). The Department has now completed this administrative review in accordance with section 751 of the Act.

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 by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (April 1, 1997).

Scope of the Order

The scope of this review includes small diameter seamless carbon and alloy standard, line and pressure pipes (''seamless pipes'') produced to the American Society for Testing and Materials (''ASTM'') standards A–335, A–106, A–53, and American Petroleum Institute (''API'') standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple-certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple-certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines

and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (''OCTG'') are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Fair Value Comparisons

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 U.S. App. LEXIS 163. In that case, based on the pre-URAA version of the Act, the Court ruled that the Department may not resort immediately to constructed value (''CV'') as the basis for foreign market value (now normal value, or ''NV'') when the Department finds home market sales of the identical or most similar merchandise to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV where the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use other sales of similar merchandise to compare to the U.S. sales if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Accordingly, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all home market sales of the foreign like product that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. Thus, we have implemented the Court's decision in CEMEX to the extent that the data on the record permitted.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received briefs and rebuttal briefs from petitioner, Gulf States Tube Division of Quanex Corporation, and the respondent in this case, Mannesmann. At the request of petitioner, we held a hearing on November 6, 1997. Based on our analysis of the issues discussed in these briefs, we have changed these final results of review from those published in our preliminary results.

Comment 1

Mannesmann maintains that the Department improperly invoked the special rule for major inputs in section 773(f)(3) of the Act when it ignored Mannesmann's verified billet costs in calculating the company's cost of production (''COP''). Mannesmann objects to the Department's revaluation of major inputs based on one purchase of billets from an unaffiliated supplier. According to Mannesmann, the Department should have treated the production of billets by Hüttenwerke Krupp Mannesmann GmbH (''HKM''), an affiliate, as integrated with Mannesmann's production of seamless pipe. At the hearing as well as at verification, Mannesmann asserted that HKM is not, in fact, an affiliate in the traditional sense of the word, but that it is run as a cost center. Mannesmann points out that the Department conducted a separate verification of HKM, and that the Department confirmed that HKM sold billets to two MRW plants, Mannesmannrohr (''MWR'') and Mannesmannröhren-Werke Sachsen GmbH (''MWS''), at cost, and that the affiliate had reported accurate and complete cost data.

Mannesmann contends that the Department has no legal basis for disregarding reported costs and instead applying the major input rule. Mannesmann argues that this provision has no relevance when the Department has verified COP data. Mannesmann argues that the Court of International Trade (''CIT'') has held that, when costs of production have been provided, ''this part of the statute is inapplicable'' (*SKF USA Inc. and SKF GmbH* v. *United States*, 888 F. Supp. 152, 156 (CIT 1995)). Mannesmann argues that costs are merely being passed along, and that HKM operates as though it were a division of Mannesmann. Therefore, according to Mannesmann, section 773(f)(3) of the Act does not apply. Mannesmann maintains that the purpose of the major input provision is to allow the Department to use the ''the best available evidence as to * * * costs of production if the Department has reasonable grounds to believe or suspect that the transfer price of an input is less than the cost of producing it.'' In this instance, Mannesmann holds that the rule has no application if the best available evidence as to the cost of producing the billets is the verified actual cost of the affiliate. Mannesmann states that sections 773(f)(2) and (3) provide that the Department may only disregard ''transfer price'' transactions if, based on the information considered, the transfer prices do not reflect a fair price. Mannesmann notes that the CIT has stated that this provision permits Commerce ''to use best evidence available when it has reasonable grounds to suspect below cost sales'' of a major input have occurred (*NSK Ltd.* v. *United States*, 910 F. Supp. 663, 670 (CIT 1995)). Mannesmann further notes

that the CIT upheld the Department's application of the major input rule in NSK because NSK failed to provide COP data, and that had NSK provided cost data, that data would have been the best evidence available.

According to Mannesmann, the Department had no reasonable basis for applying an across-the-board percentage price increase on all billets based on one exceptional purchase of a steel grade that was not sold in the United States and would not, in any event, be utilized in the calculation of NV.

Moreover, Mannesmann states that its representatives explained at verification that MWR and MWS only purchased from unaffiliated suppliers on occasions when the related party did not produce a specific grade or purity of steel or when a small volume was ordered. Mannesmann claims it must go to unaffiliated parties in these instances and purchase it at a higher price. Therefore, Mannesmann claims that no adjustment to billet costs is warranted. However, if the Department makes any adjustments for billet costs, Mannesmann asserts that the adjustment should be less punitive. Mannesmann maintains that such an adjustment could only be applied to the relevant steel grade billet, conforming to SPEC2H 61 and 62, that was sold to Mannesmann by both affiliated and unaffiliated suppliers. At the hearing, Mannesmann also proposed a third alternative which it claimed was the most adverse methodology that could reasonably be applied to this situation. Mannesmann suggested applying the same adjustment made in the preliminary results to the billets purchased from unaffiliated parties.

Petitioner argues that the statute plainly allows the Department to disregard transactions between affiliated parties (1) for any element of cost for which the transaction price between the parties ''does not fairly reflect'' the normal market prices under section 773(f)(2) and (2) where it has reasonable grounds to believe or suspect that a ''major input'' has been provided at less than the COP under section 773(f)(3).

Petitioner states that Mannesmann's citations to NSK and SKF are misplaced. According to petitioner, NSK dealt with the question of whether the Department could require a respondent to provide cost information, not for the proposition that the Department must rely on cost information to the exclusion of market value information (see NSK, 910 F. Supp. at 669). Petitioner states that in SKF, the court merely upheld the Department's discretion to apply the COP of the major input and, contrary to Mannesmann's characterization, did not find that the Department must apply the COP rather than the transfer price or market value.

Further, petitioner states that the Department's calculation of market value was supported by substantial evidence on the record and supported by law. According to petitioner's reasoning, the Department sought information ''as to what the amount would have been if the transaction had occurred between parties who were not affiliated.'' Further, the only information on the record available to the Department about what the market value would have been if bought from an unaffiliated producer was a single purchase of billets. This price difference was used as an adjustment factor for the billets purchased from the affiliated producer in the preliminary results. Petitioner states that the Department has discretionary authority to determine the best evidence available as to market value in a manner that is not inconsistent with the statute, citing *Chevron USA, Inc.* v. *Natural Resources Defense Counsil*, 467 U.S. 837, 842–43 (1984). Petitioner also cites Daewoo Elec. Co. v. *Int'l Union of Elec., Technical, Salaried and Mach. Workers*, 6 F.3d 1511, 1516 (Fed. Cir. 1993), which petitioner claims indicates that considerable weight is accorded to the Department's construction of the statute. According to petitioner, Commerce's choice of methodology will be upheld absent a showing by Mannesmann that the methodology was unreasonable. Petitioner claims that nothing in the record indicates that the chosen methodology was unreasonable.

Petitioner refutes each of Mannesmann's three arguments as to why the choice of methodology was unreasonable. First, petitioner states that to base the adjustment upon a small volume purchase was, in fact, appropriate. Petitioner asserts that the Department is directed by the statute to use the ''information available'' to determine market value and that the information chosen was the only information available. Petitioner concludes that there are no more favorable or detrimental options available to the Department.

Second, petitioner contends that the fact that the grade used to calculate the adjustment factor was not sold in the U.S. does not invalidate the Department's chosen methodology. Petitioner asserts that there is no evidence on the record to suggest that another quantity would have not also shown a similar price differential.

Third, petitioner argues that, even though actual cost data has been provided, that is irrelevant to a determination of what an arm's-length market price from an unaffiliated supplier would be. Petitioner cites section 773(f)(2), which they claim requires a determination of the market value in addition to the COP. Furthermore, petitioner states that the major input rule in section 773(f)(3) allows the Department to use the producer's actual cost only where ''such cost is greater than the amount that would be determined for such input under paragraph (2),'' which is the market value.

Petitioner concludes that the Department should continue to value billets purchased from its affiliate at the highest of COP, transfer price, or market value. Petitioner states that the Department's use of market value, when it was higher than cost, was consistent with the statutory directive.

Department's Position

The Department agrees with petitioner and maintains its position as stated in the preliminary determination. We disagree with Mannesmann's assertion that the Department improperly invoked the special rule for major inputs. Sections 773(f)(2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Section 773(f)(2) indicates that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration (where the production takes place). Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under 773(f)(2). Section 773(f)(3) applies if the Department ''has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input.'' The Department generally finds that such ''reasonable grounds'' exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation was conducted in this case, the Department requested in its Supplemental Section D questionnaire that Mannesmann provide COP information for the billet rounds.

That cost information was provided by the affiliated party and was verified. In accordance with sections 773(f)(2) and (3), we used the highest of transfer price, COP or market value to value the billets.

The Department disagrees with Mannesmann's claim that it had no reasonable basis to apply an across-the-board percentage price increase on all billets based upon one exceptional purchase of a steel grade that was not sold in the United States. Market price information was requested in the Section D questionnaire for any purchases of the identical input from unaffiliated suppliers, but Mannesmann did not respond to this portion of the questionnaire. In the second Supplemental D questionnaire response at question 4, Mannesmann made a specific claim regarding purchases of inputs from affiliated and unaffiliated parties. (See proprietary Final Analysis Memo; March 9, 1998) At verification the Department attempted to verify this claim by examining Mannesmann's purchases of billets in one sample month. We discovered one such purchase in this month, and utilized this purchase price as market value. (See Cost Verification Report at V.5.B.3) Further, as there is no other information on the record, we have used this information as facts available to determine market values for other types of billets.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

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 the 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.

The use of adverse facts available is appropriate. Therefore, for the final results, as adverse facts available, we have continued to apply this market value adjustment to all purchases from affiliated suppliers.

Comment 2

Mannesmann states that the Department improperly rejected its claim for a startup adjustment pursuant to section 773(f)(1)(c) of the Act in its preliminary results in spite of the fact that it met the statutory requirement for this adjustment. Mannesmann states that it substantially retooled the push bench operations at Zeithain, and that production levels were substantially limited by technical factors associated with the initial phase of commercial production. According to Mannesmann, when the statutory criteria are fulfilled, the Department must make a startup adjustment. Mannesmann cites Notice of Preliminary Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 62 FR 51442, 51447–48 (Oct. 1, 1997), as a case in which the startup adjustment was preliminarily granted when the ''threshold criteria'' of the statute were met.

The Department's denial, in Mannesmann's view, is not supported by the record and the Department's Preliminary Analysis Memorandum of September 2, 1997 indicates that the Department misunderstood the evidence Mannesmann submitted to support its claim.

According to Mannesmann, the Department incorrectly equated the push bench machine with the push bench operation. Mannesmann states that the push bench operations encompass much more than one machine as implied by the Department. Mannesmann states that the Department's Cost Verification Report documents and describes the substantial investments made by Mannesmann in retooling and replacing the push bench operation at Zeithain (see Cost Verification Exhibit Z–4).

In addition, Mannesmann contends that it documented and the Department verified that a substantial percentage of the total fixed assets at the Zeithain mill consisted of push bench operations. See Supplemental Section D Response at 12, and Exhibit D–6; Cost Verification Exhibit Z–25.

Mannesmann claims that record evidence clearly documents the reduced productivity of the push bench operations during the startup period. In Mannesmann's opinion, the Department's conclusion that production and manufacturing activity levels were substantially the same during 1995 and the claimed startup period in 1996 is erroneous. According to Mannesmann, the machine operating time shown in Exhibit 5 of the Department's Cost Verification Report is not a measure of actual operating time and, therefore, does not provide an accurate factual basis of productivity. Instead, Mannesmann states that the Department must evaluate the efficiency of the plant measured in output over a given time period in order to gauge accurately the impact of retooling the push bench operations. Mannesmann points out that the Efficiency Comparison Table provided at the Zeithain cost verification documents the clear drop in productivity during the first seven months of 1996, compared to production in 1995. See Cost Verification Exhibit Z–25. Mannesmann refers to a graph which they included in their brief as an illustration of the substantial lower production efficiency of the push bench operations during the startup period when new and retooled equipment was being brought on line.

Moreover, Mannesmann points out that it has met the requirement that a company is entitled to a startup adjustment if it properly identifies the technical problems encountered during startup that resulted in reduced productivity. See Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Rep. No. 103–316 (1994) at 168 (838).

Mannesmann concludes that the investment at the Zeithain mill has been substantial, and the startup problems well-documented. Accordingly, Mannesmann believes that the Department must grant it the requested adjustment in the final results of this review.

Petitioner counters that Mannesmann's investment amounts to a much smaller portion of total assets for the period of review (''POR'') than it claims. Petitioner maintains that section 773(f)(1)(c)(ii)(I) makes clear that a substantial investment is not enough to trigger the adjustment; the substantial adjustment must result in a new production facility. According to petitioner, there is no evidence to indicate how much of the additional expenditures were part of ongoing improvements to the existing facility.

Petitioner also rejects Mannesmann's reliance on productivity in terms of tons per hour as a measure of limited production levels rather than reliance on total volume of production as stated in section 773(f)(1)(c)(ii) of the Act: ''the administering authority shall consider factors unrelated to startup operations that might affect the volume of

production processed * * *'' Petitioner maintains that the statute and the regulations are concerned with reaching commercial production levels and, in petitioner's view, Mannesmann had operated at commercial production levels.

Petitioner agrees with the Department's finding that the record does not show that production and manufacturing activity were significantly different during the alleged startup period and the same period in the previous year. Therefore, the Department should continue to deny Mannesmann's requested startup adjustments for these final results.

Department's Position

The Department agrees with petitioner that Mannesmann did not adequately demonstrate its eligibility for a startup adjustment. Under section 773(f)(1)(C)(ii) of the Act, Commerce may make an adjustment for startup costs only if the following two conditions are satisfied: (1) A company is using new production facilities or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. Here, neither prong of the test has been satisfied.

Mannesmann did not construct new production facilities or produce a new product. This case is thus unlike Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17162 (April 9, 1997) or Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8930 (February 23, 1998), in which respondents constructed entirely new facilities. Mannesmann could not demonstrate the ''substantially complete retooling of an existing plant,'' as required in the SAA at 166(836). The SAA states that ''substantially complete retooling involves the replacement or equivalent rebuilding of nearly all production machinery.'' In Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea, 62 FR 51420, 51425 (October 1, 1997), the Department denied a startup adjustment where the ''substantially complete retooling'' requirement was not met. Because the respondent ''merely relocated its production facility without replacing or rebuilding nearly all of its machinery, and the record evidence does not show that the relocation involved a substantial investment in connection with the revamping or redesigning of collated roofing nails, the first condition for the startup adjustment is not satisfied.'' Similarly, record evidence of the fixed asset expenditures in this case does not demonstrate that the 1996 push-bench replacement represented a ''substantially complete retooling.'' The level of its investment which was reviewed by the Department, while substantial, does not reach the level where it could be classified as a complete retooling of the plant. Further, the Department has viewed the push-bench during the plant tour and has reviewed the plant layouts which were submitted in the Supplemental Section D questionnaire response to gain further understanding of the push-bench operation. While Mannesmann did work on a number of machines within the push-bench operation, in many cases, Mannesmann only replaced or rebuilt part of the machine (see page 19 of the Sales Verification Report). This did not result in the replacement or equivalent rebuilding of nearly all production machinery, and coupled with the level of investment, leads us to conclude that Mannesmann does not meet the criteria for new production facilities.

As stated in Collated Roofing Nails From Korea, 62 FR at 51426, ''because [respondent] does not meet the requirements outlined in the first prong of the start-up provision, the Department is not required to address whether or not [respondent's] production levels were limited by technical factors associated with the initial phase of commercial production''. The Department did, however, review evidence on the record whereby Mannesmann attempted to demonstrate that production levels at the Zeithain mill were substantially limited by technical factors during the startup period. The Department has fully reviewed the productivity, machine operating time, and efficiency data presented by Mannesmann in responses and at verification for all of 1995 and 1996. While productivity and efficiency decreased from 1995 to 1996 as shown in Cost Verification Exhibit Z–25, this decline was not substantial enough to indicate that Mannesmann was unable to produce in commercial quantities. Further, the decline in productivity occurred throughout the year and not only during the alleged startup period. Thus, we could not correlate the demonstrated decline in productivity with the installation of the push-bench operation. Therefore, due to the fact that neither the substantial retooling nor the reduced productivity requirements has been adequately supported, we have disallowed the startup adjustment.

Comment 3

Mannesmann claims that it has provided evidence on the record to support its claimed offset to financial expenses from short-term interest income. It states that the Preliminary Analysis Memorandum indicates that the Department wrongly denied the offset because it presumed that Mannesmann's reported financial income was from long-term investment. According to Mannesmann, this presumption is inaccurate.

According to Mannesmann, its consolidated financial statements and annual reports show that income from long-term loans and investments is separately listed and distinguished from short-term interest and investments. Mannesmann states that the amount of income earned from working capital is, by definition, related to manufacturing and sales operations, and cites a case in which this methodology was accepted (Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*, 60 FR 10900, 10925 (Feb. 28, 1995)). Mannesmann states that its financial statements were verified for accuracy and completeness, and that the data reported in those financial statements should be used to calculate a short-term interest income offset in the reported financial expense.

Further, Mannesmann states that the CIT has held that short-term interest does not need to be exclusively related to the merchandise subject to review in order to qualify as an offset to interest expense (*Timken Co.* v. *United States*, 852 F. Supp. 1040, 1047–48 (CIT 1994)). Accordingly, Mannesmann concludes that the Department must allow the short-term interest income offset in the calculation of financial expense because it was derived from its verified financial statements, and it is related to the ordinary course of business.

Petitioner states that the Department properly denied the interest income offset in computing financial expense. Petitioner asserts that, because Mannesmann did not provide a requested schedule to support its claim that the interest income was, in fact, short-term in nature, the offset should be denied. It is petitioner's contention that, because the account title ''other interest and similar income'' does not describe the long or short-term nature of the account amount, that one cannot conclude that it is short-term in nature. Thus, petitioner urges the Department to

continue to deny the interest income offset in its final results.

Department's Position

We agree with Mannesmann. For these final results, the Department has allowed the short-term interest income offset which Mannesmann claimed in its calculation of financial expense. Although a schedule which specifically supported this amount was not provided at verification, we have concluded through further review of the financial statements that the income is short-term in nature. Interest income appears in two line items in the disclosure of interest income and expense. One of the line items indicates that it is long-term in nature, and the other line item, which has a general description that does not specifically indicate that it is short-term, can reasonably be assumed to be short-term interest income.

We agree that the financial statements were verified and have been audited, thus providing a reliable basis for interest expense calculation. Further, we agree that the short-term interest income does not need to be exclusively related to the merchandise subject to review in order to qualify as an offset to interest expense.

Comment 4

Mannesmann objects to the Department's application of the highest duty reported to all U.S. sales as adverse facts available, when there were only minor differences between the U.S. duty reported and the verified amounts. At verification the Department examined the duty paid on more than half of total U.S. sales and found only minor discrepancies which, according to Mannesmann, were the result of allocation and rounding methodologies.

Given that the Department verified the reliability and accuracy of MPS' accounting system and record keeping (see U.S. Sales Verification Report at 14–16), Mannesmann believes the Department should use the duty data reported by Mannesmann for its final results. However, if the Department chooses to adjust the reported duty amounts, Mannesmann suggests that the Department add to the reported duty for all sales the weighted average or difference between what was reported and what was verified. Mannesmann believes this approach would result in a ''fair comparison,'' the basic purpose of the URAA. According to Mannesmann, the punitive approach of adverse facts available is unwarranted.

Mannesmann contends that the use of adverse facts available under these circumstances is contrary to the purposes of the Act, the SAA and established principles of dumping law. According to Mannesmann, the Department's apparent rationale for choosing a punitive margin rate was that certain sales trace documents in the home market were not photocopied and provided promptly enough. Mannesmann reiterates that they were subject to four and a half weeks of verification at different locations, during which time the Department had every opportunity to check the accuracy and completeness of the data submitted by the Mannesmann companies. It is their contention that the Department simply has no grounds to allege that Mannesmann has in any way been ''uncooperative.'' According to Mannesmann, the assertion that Mannesmann has been uncooperative in any aspect of the administrative review is contradicted by the factual record. Mannesmann argues that the initial threshold for applying facts available, let alone adverse facts available, is high. The Department is only authorized to use adverse inferences in extreme situations, such as when it 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, in Mannesmann's view. Mannesmann states that it did not engage in any activity during the course of this administrative review that could even remotely be characterized as uncooperative behavior deserving of adverse inferences. Further, they claim that they have fully complied with the Department's requests for information and they state that there is ample information on the record that allows the Department to use more accurate evidence as ''facts available'' than to apply facts available based on adverse inferences. Mannesmann asserts that the Department is under a legal obligation to use the most accurate information available to make ''fair comparisons'' and obtain an accurate dumping margin. Mannesmann concludes that the Department should base its calculations for the final results on the factual evidence available in the records of this review.

Petitioner argues that the application of facts available in this case is justified because Mannesmann was unable to verify the correctness of the reported duty amounts and did not have the information to provide corrections to many of the sales. In addition, petitioner maintains that correcting each of Mannesmann's sales listings to account for these errors would have caused undue difficulty to the Department.

Concerning Mannesmann's complaint that the application of the highest duty constitutes adverse facts available out of proportion with the discrepancies found, petitioner states that the choice of the facts available is discretionary, and that both the Department's old and new regulations permit the use of other information submitted by the respondent as facts available. See 19 CFR 353.37(b) and 19 CFR 351.308(c) (62 FR 27296; May 19, 1997). Petitioner argues that the use of adverse facts available is thus warranted in this case.

Department's Position

We agree in part with both Mannesmann and petitioner. In this case, Mannesmann incorrectly reported U.S. duty for the majority of the U.S. sales examined at verification (see U.S. Sales Verification Report at 21). In determining whether U.S. duty was properly reported, we summed total U.S. duty paid on the entry we were examining and compared it to total U.S. duty reported in the applicable observations. For several of the entries (comprising numerous sales observations), we found that the total U.S. duty across the associated observations was underreported. This indicates that errors exist which are more pervasive than can be explained by rounding or allocation methodologies. In addition, the company could not recreate or explain the allocation methodologies used in its submission.

For the sales for which we were able to verify that duty was correctly reported, we are using the reported duty amounts for these final results. For all other sales, we have applied as adverse facts available one of two duty rates, depending upon product classification. We applied the highest reported duty amount for carbon products to all sales of carbon products, and we applied the highest reported U.S. duty amount for alloy products to all sales of alloy products (see Final Analysis Memorandum of March 9, 1998). While the Department has broad discretion on the use of facts available (see Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37874 (July 15, 1997) and *Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185, 1191 (Fed. Cir. 1993)), we determined that it was appropriate to consider the differences in value and duty rates for the two classes of products in our choice of facts available.

By not providing verifiable information for U.S. duties when such information was available to Mannesmann, we have determined that Mannesmann failed to cooperate by not acting to the best of its ability to comply

with a request for information. Therefore, the use of adverse facts available is appropriate (see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61739 (Final, Nov. 19, 1997)).

Comment 5

Mannesmann maintains that the adverse assumptions made by the Department about its U.S. sales data are not justified. Mannesmann states that in its attempt to accurately reflect its normal business practices in reporting U.S. sales data, it was necessary to allocate certain movement expenses between subject and nonsubject merchandise. Moreover, Mannesmann notes that it reported the actual inland freight it was charged by its German affiliate, MH. These costs, however, often differed slightly from the actual costs MH paid to outside unaffiliated suppliers for services. As a result, slight discrepancies occurred between the U.S. freight data submitted and the expenses reviewed at verification.

Mannesmann also objects to the Department's use of the highest reported amounts for foreign inland freight as partial facts available. Although Mannesmann reported the amounts it is charged and actually pays its affiliate for transportation, at verification the Department was unable to tie these amounts to third-party payments by MH because Mannesmann does not receive these third-party invoices, but simply pays MH based on MH's allocation of freight charges.

Mannesmann argues the Department should use the amounts reported or, alternatively, a freight amount that reflects the amounts verified at Mannesmann, such as the higher of the reported amount or the average of all foreign inland freight reported for each mill. In any case, Mannesmann holds that the Department should not make a freight amount adjustment where it is reported as zero. Further, Mannesmann states that the use of adverse facts available is not appropriate.

Petitioner points out that this same inability to provide the required information occurred in the original investigation and prompted the Department to apply best information available (''BIA'') (see Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany, 60 FR 31980 (June 19, 1995)) (''German seamless pipe LTFV final''). In petitioner's view, in the instant case Mannesmann's failure even to attempt to provide payment records for sample sales at verification constitutes a failure to cooperate with the Department and justifies the use of adverse facts available.

Department's Position

We agree with petitioner. By not providing verifiable information for inland freight, including actual payment records, when such information was available to Mannesmann, we have determined that Mannesmann failed to cooperate by not acting to the best of its ability to comply with a request for information.

Mannesmann reported foreign inland freight in two fields: (1) Plant to border and (2) border to port. We examined one sale in which one of these fields was zero. The freight reported in the other field was explained to include all freight from plant to port, but it was incorrectly reported. Therefore, since the freight amounts reported were inaccurate or could not be supported, we are continuing to apply facts available. However, in these final results, we are using the highest reported inland freight amount in each freight field by mill. We realize that the mills are located hundreds of miles apart, and therefore, there could very likely be differences in the cost of freight from plant to port between the two plants. We were able to verify production by mill, and the mill source reported for each sale.

Comment 6

Mannesmann maintains that the Department should not deduct indirect selling expenses (DINDIRSU and RINDIRSU) (*i.e.*, amounts related to selling expenses incurred in the country of manufacture) from export price (''EP'')/constructed export price (''CEP'') because these fields do not contain expenses ''which result from, and bear a direct relationship to, selling activities in the United States.'' See SAA at 153 (823). Mannesmann cites Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 171167 (April 9, 1997); Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review, 61 FR 64322, 64326 (December 4, 1996); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326, 30352 (June 14, 1996). Mannesmann concludes that the Department should correct its final calculations to conform with the statute and the clear dictates of the SAA and not subtract these two fields from the U.S. price.

Petitioner holds that Mannesmann's claim that the selling expense must be incurred in the U.S. market in order to be deducted from CEP is not supported by the statute. According to petitioner, the phrase ''in the United States'' is a reference to the location of the affiliated seller and not an attempt to limit the deduction to selling expenses incurred in the United States. If such a limitation were intended, petitioner states that the phrase ''in the United States'' would have occurred immediately after the phrase ''generally incurred'' in section 772(d)(1) of the Act.

Department's Position

We agree in part with both Mannesmann and petitioners. The indirect selling expenses incurred in Germany (RINDIRSU and DINDIRSU) are associated both with sales of the merchandise from the producer/exporter to the affiliated importer in the United States and with sales from the affiliated importer to unaffiliated customers. See German Sales Verification Report at 11–12, U.S. Sales Verification Report at Exhibit 11, and Mannesmann's Section A Questionnaire Response at 24. As we explained in Gray Portland Cement and Clinker From Mexico, 62 FR at 17167–68, we do not believe that section 772(d) of the Act requires us to deduct selling expenses not associated with economic activities occurring in the United States. See SAA at 153 (823). Accordingly, we do not treat expenses associated with the sale of the merchandise from the producer/exporter to the affiliated importer as U.S. selling expenses.

Applying this practice here, we have deducted RINDIRSU (associated with MRW's selling activities), but not DINDIRSU (associated with MH's selling activities), from Mannesmann's CEP. We noted at verification that MRW worked directly with unaffiliated U.S. customers in the development of certain specifications. While MRW also incurred selling expenses associated with sales to MPS, the affiliated U.S. importer, the record nevertheless supports the deduction of RINDIRSU from CEP given MRW's involvement with unaffiliated U.S. customers. See U.S. Sales Verification Exhibit 20. MH's selling expenses, however, mainly relate to transactions between MRW and MPS. For these reasons, we believe that it is reasonable to deduct RINDIRSU, but not DINDIRSU, as indirect selling expenses.

Comment 7

Mannesmann claims that the Department, in calculating the margin for the preliminary results, assumed all products designated as low temperature

in MPS' list were subject merchandise and incorrectly treated A–333 pipe used in low temperature applications as covered products. Mannesmann states that at verification it provided the Department with a printout of all sales in the three MPS material classes that could possibly contain subject merchandise and noted why some sales were not on the sales database. The Department spot-checked unreported merchandise on the list and, according to Mannesmann, asked no further questions. See U.S. Sales Verification Exhibits 15 and 16.

Mannesmann maintains that since A–333 is a specialized low temperature pipe and more expensive than pipe used in standard, line and pressure pipe applications, it would make no economic sense for a customer to order the specialized low temperature pipe for a less exacting specification. Mannesmann also notes that A–333 pipe is not tested to perform at all levels of service required of A–106 pipe, and would not customarily be substituted for A–106 applications. According to Mannesmann, the Department erroneously assumed all products designated as low temperature in MPS' list were subject merchandise. Mannesmann explains that A–333 pipe is only covered by the scope of the antidumping duty order if such pipe is used in standard, line or pressure pipe applications. Mannesmann emphasizes that all A–333 invoices reviewed by the Department during verification confirmed that MPS' sales of A–333 pipe were for low temperature applications only.

Mannesmann claims that the Department did not question nor voice dissatisfaction with its spot-check of the invoices at verification. In Mannesmann's view, the Department was obligated to provide it with some notice at verification that the company's explanations did not satisfy the Department.

Mannesmann states that the confusion concerning whether A–333 pipe is covered by the antidumping order illustrates the difficulties inherent in having end-use as a scope criterion. See Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico and Venezuela, 61 FR 11608 (March 21, 1996). Mannesmann also claims that the Department decided in the original investigation that no end-use certification would be required ''until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring'' and that certifications would only be required for those products ''for which evidence is provided that substitution is occurring.'' See German seamless pipe LTFV final at 31975–6. Mannesmann argues that the Department cannot assume that normally non-subject merchandise has been utilized for standard, line, or pressure pipe purposes without some evidence on the record to support such an assumption. Indeed, according to Mannesmann all available evidence on the record is to the contrary and the Department cannot as a matter of law include sales of non-subject A–333 merchandise in its margin calculation.

Moreover, Mannesmann objects to the Department's application of the margin rate from the initial investigation to sales of low temperature merchandise. Mannesmann claims that section 776(c) of the Act requires the Department to corroborate any secondary information used as facts available from independent sources reasonably at its disposal. Mannesmann states that the SAA makes clear that the Department ''will satisfy [itself] that the secondary information to be used has probative value.'' See SAA at 200 (870). Mannesmann notes that it submitted information in the original investigation explaining why the margin calculated in the petition and chosen by the Department as BIA should not have been used. Mannesmann argues that petitioner's calculations cannot be corroborated as required by the Act, and applying the margin from the petition would be directly contrary to the URAA. According to Mannesmann, in Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49567, 49568 (September 26, 1995), the Department rejected the highest rate from the previous review as BIA because it was not representative.

Mannesmann argues that the Department should not use adverse facts available to calculate a margin on non-subject A–333 low-temperature products. Mannesmann claims that it fully cooperated with the Department and the standard for applying adverse facts available is high. See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 37014, 37019–20 (July 10, 1997); Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 32757, 32 758 (June 17, 1997).

Petitioner argues that the Department properly applied facts available to A–333 pipe that Mannesmann did not report in its U.S. sales listing. Petitioner notes that Mannesmann unilaterally determined that these sales were not within the scope of the order and the Department did not learn about such sales until verification.

Petitioner notes that the scope of the order specifically includes A–333 pipe when ''such pipes are used in a standard, line or pressure pipe application.'' In petitioner's view, Mannesmann did not provide the Department with any information on the use of A–333 products at verification and the Department was unable to verify that these products were not used in covered applications. Petitioner claims that Mannesmann should have raised any doubts about the scope of the order and its reporting requirements, as it is the Department who determines what information is to be provided in a dumping review, not the respondent. See *Ansaldo Componenti, S.p.A.* v. *United States*, 628 F.Supp. 198, 205 (CIT 1992). According to petitioner, respondents cannot be allowed to make unilateral decisions about the information to be provided when ambiguity exists. In *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 303–304 (1994), petitioner points out that the CIT held that application of BIA was appropriate because the responding party had a duty to resolve the issue with the Department prior to submitting its response.

Petitioner states that the cost differential between A–333 and A–106 pipe would make substitution possible. Petitioner rejects Mannesmann's contention that Exhibit 28 provides an indication that the material was used for low-temperature service outside the scope of the order. Petitioner contends that invoices merely show the product was tested to meet low-temperature uses, but do not establish that the pipe was actually used in that way. Petitioner states that Mannesmann was obligated to fully report all sales of subject merchandise; it is not incumbent on the Department to prove that Mannesmann's A–333 sales were used for covered applications. Petitioner argues that, due to Mannesmann's lack of adequate preparation for verification, Mannesmann cannot reasonably expect the Department to have spent additional time chasing down information on A–333 sales—information that Mannesmann was obligated to provide in its questionnaire response.

Concerning Mannesmann's complaint that the Department cannot use the rate from the petition as the facts available margin because the rate cannot be corroborated, petitioner maintains that section 776 of the Act requires corroboration of the information only ''to the extent practicable.'' Moreover,

the SAA at 200 (870) specifically provides that ''the fact that corroboration may not be practicable in a given circumstance, will not prevent the Department from applying adverse inferences.'' Petitioner points out that since Mannesmann's responses were unusable for purposes of the final determination (see German seamless pipe LTFV final at 31978), they are equally unusable for purposes of corroborating the final results of this review. Petitioner argues that the use of adverse facts available is appropriate due to Mannesmann's unilateral decisions about what information to provide to the Department.

Department's Position

We agree with Mannesmann. While it is true that the scope of this order specifically includes A–333 pipe when such pipes ''are used in a standard, line or pressure pipe application,'' the Department decided in the original investigation that no end-use certification would be required ''until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring'' and that certifications would only be required for those products ''for which evidence is provided that substitution is occurring.'' See German seamless pipe LTFV final at 31975–6. Petitioner has not provided the Department with any information which provides us a reasonable basis to believe or suspect that A–333 pipe is being used for standard, line or pressure applications in the context of this review. In the absence of such information, we are considering Mannesmann's U.S. sales of A–333 pipe to be non-subject merchandise for these final results.

Comment 8

Mannesmann asserts that if there is a difference between the actual functions performed by sellers at the different levels of trade in the two markets and the difference affects price comparability, the Department is required to make a level of trade (''LOT'') adjustment pursuant to section 773(a)(7)(A) of the Act.

Mannesmann maintains that during the POR it made sales in the home market at two distinct levels of trade, to end-users and to distributors. According to Mannesmann, the Department examined in detail documents demonstrating that products sold to end-users for special projects required different market research, quality control, delivery services, customer-specific R&D, engineering services, and communications services than products sold to distributors. According to Mannesmann, the fact that it devotes significantly greater resources to one of the two sales levels confirms that sales to end-users and distributors constitute separate levels of trade.

Mannesmann also claims that sales in the U.S. market also occur at these two different levels of trade. Mannesmann states that the Department verified its dedication of substantial resources and technicians' time to maintain close quality control over special project pipes manufactured for a major U.S. customer. In Mannesmann's view, sales of commodity-type pipes to distributors do not require such close collaboration or extensive customer-specific R&D and engineering services.

Mannesmann references the statistical analysis provided to the Department in Exhibit A–7 of its Supplemental Section A response as evidence that the price of the identical control number sold to a distributor is on average less than the prices to end-users.

Mannesmann concludes that the Department, pursuant to section 773(a)(7)(A) of the Act, must make an LOT adjustment to account for the differences in selling functions in the two markets. Alternatively, Mannesmann states that if the Department determines that its U.S. sales were CEP sales, the Department must make a CEP offset adjustment because the home market LOT is at a more advanced stage of distribution than the LOT of the CEP sales (see Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632 (September 10, 1997)).

Petitioner argues that Mannesmann failed to substantiate its claim that the two levels of trade in each market were different. Petitioner additionally notes that LOT was never discussed at the U.S. verification due to Mannesmann's lack of preparation in other areas (see U.S. Sales Verification Report at 29) and no information was provided at the home market verification to substantiate Mannesmann's claim of differences in selling functions (see German Sales Verification Report at 42).

Petitioner also points out that since Mannesmann did not provide in its response or at verification any of the data from its statistical analysis at Exhibit A–7, its claim of a pattern of consistent price differences is unsubstantiated and unverified.

According to petitioner, contrary to Mannesmann's claim, a CEP offset is not appropriate unless the Department finds more than one LOT. Therefore, in petitioner's view, Mannesmann's failure to establish the existence of two levels of trade renders a LOT adjustment under section 773(a)(7)(A) or a CEP offset under section 773(a)(7)(B) inappropriate.

Department's Position

We agree with petitioner. In determining whether separate levels of trade actually existed in the U.S. and home markets, we examined Mannesmann's marketing stages, reviewing the chains of distribution, customer categories and selling functions reported in the home market and in the United States. We agree with petitioner that Mannesmann did not substantiate its claims relating to differences in LOT.

As we stated in our preliminary results, Mannesmann's questionnaire response indicated that it provided higher levels of support to end-users than to distributors, but Mannesmann did not explain what distinguished high from low support or support these claims at verification. At verification, when we asked about differences in LOT, Mannesmann merely provided an organization chart. Mannesmann provided no documentation, as requested in the sales verification outline, regarding claimed differences or the extent of any differences in selling functions for sales to end-users versus distributors and between sales to its home market customers and the CEP LOT. We determined for the preliminary results that sales within each market and between markets are not made at different levels of trade. Of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. Respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different. Mannesmann has not satisfied its burden in this case, and therefore the Department is not required to address whether prices at the allegedly different home market levels of trade resulted in a pattern of consistent price differences. Accordingly, for these final results, we continue to determine that Mannesmann's sales were at a single LOT in both markets. We are not granting Mannesmann a LOT adjustment or a CEP offset.

Comment 9

Although the Department's questionnaire, consistent with the new regulations, states that invoice date is generally to be considered the date of sale, petitioner holds that, in this case, the order confirmation date is more

appropriate than the shipment date as the date of sale. Petitioner claims that the Department's choice of shipment date for sale date is not in accordance with its past practice or its statement of current policy. Petitioner notes that, until recently, the Department's practice has been to require respondents to report the U.S. date of sale based on the date on which the material terms of the sale between the buyer and the seller were established. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28175 (July 28, 1987). Petitioner points out that although the new regulations indicate a preference for the invoice date, the Department recognizes that the terms of sale may change or remain negotiable from the time of the initial agreement.

Petitioner states that, in this case, the order confirmation established the terms of sale. In petitioner's view, there is no information on the record from Mannesmann indicating that the terms of the U.S. sales change between the date of the order confirmation and the date of shipment. Petitioner notes that Mannesmann reported the order confirmation date as date of sale.

Moreover, since the Department has determined that Mannesmann's U.S. sales are CEP sales, petitioner holds that it is more appropriate to use the order confirmation date because the date of export from the German producer is somewhat arbitrary. Petitioner notes that the Department has stated its preference to use dates other than the date of shipment for date of sale See Notice of Final Rule, 62 FR 27296, 27349 (May 19, 1997).

Petitioner states that any delay between the order confirmation date and the shipment date should not affect price analysis because Germany does not suffer from hyperinflation. Even more significant, according to petitioner, is the fact that the Department's goal is to compare prices that have been set in the same contemporaneous period, and by using the order confirmation date for U.S. sales and the invoice date for home market sales, the terms of sale in the two relevant markets would have been set in the same month. Petitioner concludes that it is clear that, in the preliminary results, the Department incorrectly chose to align the dates of shipment rather than the dates the terms of sale were set.

Mannesmann terms petitioner's arguments regarding the proper U.S. and home market dates of sale without merit. It maintains that, consistent with the Department's preferred approach, it used the invoice date as the date of sale when reporting home market sales because the terms of the sale and the quantity are often not finally fixed until the invoice is generated (see Section A Response at 23). Since the Department did not permit Mannesmann to report the invoice date as the U.S. date of sale (the Mannesmann invoice is issued post-shipment in Germany), Mannesmann maintains that the Department's determination to use the shipment date as the U.S. date of sale is entirely appropriate.

Given that several months often elapse between order confirmation date and shipment date, Mannesmann agrees that the shipment date for U.S. sales is most comparable to the home market invoice date because it most closely corresponds to the invoice date. Mannesmann notes that the Department has utilized shipment date as date of sale, rather than the order or order confirmation date, when the shipment date most closely corresponded to the invoice date. See Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 62 FR 34216, 34227 (June 25, 1997). Mannesmann argues that the Department has also used shipment date as date of sale when there was a potential for the terms of sale to change. Mannesmann claims that the Department reviewed numerous change orders in this case, making shipment date the most logical choice for the U.S. date of sale. See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose From the Federal Republic of Germany, 55 FR 21058, 21059 (May 22, 1990). Mannesmann further states that the Department has used the shipment date as the date of sale when a respondent utilized this date for purposes of its financial reporting. Mannesmann claims that, in the normal course of business, it generates invoices on the date of shipment and that this date is used for purposes of recording sales and financial accounting in both markets.

Mannesmann also rejects petitioner's argument that any price analysis would not be affected by the time interval between order confirmation date and shipment because Germany does not suffer from ''hyperinflation.'' Mannesmann states that many other factors (*e.g.*, market price fluctuations, a new competitor, a movement in exchange rates) can have substantial impact on the price analysis over the period of several months.

Department's Position

We agree with Mannesmann. Although we recognize that the Department's practice is normally to use the invoice date (see Memorandum from Susan G. Esserman, ''Date of Sale Methodology Under New Regulations,'' March 29, 1996), we are continuing to use shipment date as the date of sale for U.S. sales for these final results. As we explained in the preliminary results, 62 FR at 47448, our questionnaire to Mannesmann stated that in no case could the date of sale be later than the date of shipment. The invoice date for each of Mannesmann's U.S. sales was later than the shipment date. Further, at verification we observed changes in U.S. terms of sale after the order confirmation date. See U.S. Sales Verification Exhibits 20, 21. We are thus satisfied that the date of shipment best reflects the date on which the material terms of Mannesmann's U.S. sales were established. This is also consistent with our preference of using comparable events in establishing the date of sale in both markets. As we also noted in the preliminary results, we used invoice date (which is the same as date of shipment) as date of sale in the home market. We are continuing to do so for the final results. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico, 61 FR 56608, 56611 (Nov. 1, 1996) (''We based date of sale on shipment date to avoid the potential for distortion of cost and price comparisons that occur when there is a significant lag time between date of shipment and date of invoice within the same market and/or between the two markets.'').

Comment 10

Petitioner maintains that Mannesmann did not report any warehousing expenses associated with those sales the Department discovered at verification to be in inventory. If the information on warehousing is not available, petitioner believes the Department should make an adjustment to CEP based on the facts available pursuant to section 776 of the Act. If the Department does not have sufficient information to make a facts available determination as to warehousing expenses, petitioner believes the margin for the affected sales should be based entirely on facts available.

Mannesmann counters that no adjustments to the reported sales data were necessary to account for warehousing expenses because none were incurred (see Sections B and C Response at 43).

For those observations specifically noted by petitioner, Mannesmann points out that complete documentation for these sales was provided to the Department at verification and a review of these documents confirmed the absence of warehousing expenses.

Department's Position

We agree in part with Mannesmann and with petitioner. We have no evidence that Mannesmann incurred warehousing expenses and we did not ask about them at verification. Mannesmann's brief indicates that if they had warehousing expenses, they would have appeared on the unloading invoice in the sales trace package. However, we do know the merchandise arrived in the U.S. and did not get sold until a later date. Therefore, while we cannot prove the existence of warehousing expenses, we agree with petitioner that these sales remained in inventory for a period of time. Therefore to account for this fact, we have calculated inventory carrying costs for these final results (see Final Analysis Memorandum of March 9, 1998).

Results of Review

We determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Mannesmann	1/27/95–7/31/96	22.12

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP/CEP and NV may vary from the percentage 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 final results of review for all shipments of small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Germany, within the scope of the order, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the 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 LTFV 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) for all other producers and/or exporters of this merchandise, the cash deposit rate of 57.72 percent, the all-others rate, established in the LTFV investigation, shall remain in effect until publication of the final results of the next administrative review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the entered value of each entry of subject merchandise during the POR.

Notification of Interested Parties

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 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 19 CFR 353.34(d). Timely written 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. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

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

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7017 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has been issued an amendment to Scientific Research Permit No. 974 (P368F).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On January 6, 1998, notice was published in the Federal Register (63 FR 471) that an amendment of Permit No. 974, issued September 7, 1995 (60 FR 46577), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amendment authorizes the researcher to: determine body fat of harbor seals (Phoca vitulina); handle 20 harbor seal pups up to four times and 80 pups one time annually to track changes in health, physiological condition, and diving behavior; handle 20 adults and 20 juveniles four times annually to determine seasonal shifts in health, physiological condition, and diving behavior; and harass 200 additional harbor seals as a result of the above activities.

Dated: March 12, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

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