

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XR75

**Fisheries of the Northeastern United States; Essential Fish Habitat (EFH) Components of Fishery Management Plans (Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Atlantic Herring, Skates, Atlantic Salmon, and Atlantic Deep-Sea Red Crab) 5-year Review**

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

**ACTION:** Supplemental notice of intent (NOI) to prepare an environmental impact statement (EIS); comment period reopened.

**SUMMARY:** NMFS is reopening the public comment period for the supplemental NOI to prepare an EIS for the Omnibus Habitat Amendment that was published on October 5, 2009. This is necessary because some comments that were submitted via e-mail may not have been delivered properly. This notice reopens the comment period to ensure all interested parties' comments are received and addressed correctly.

**DATES:** Written comments must be received on or before 5 p.m. e.s.t., December 21, 2009.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [HabitatNOI@noaa.gov](mailto:HabitatNOI@noaa.gov).
- Mail: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

• Fax: (978) 465–3116.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** On October 5, 2009, the New England Fishery Management Council (Council) announced that it is in the process of preparing a programmatic Environmental Impact Statement (EIS) and Omnibus Amendment to the fishery management plans for Northeast multispecies, Atlantic sea scallop, monkfish, Atlantic herring, skates, Atlantic salmon, and Atlantic deep-sea red crab (74 FR 51126). This NOI proposed that the Council would prepare one final EIS that incorporates all topics considered in the development of the Omnibus Amendment, rather than preparing a final Phase 1 EIS prior to completing

work on Phase 2 topics. During that scoping period, the Council sought comments on its intent to not complete a Phase 1 Final EIS, as well as comments on any new scientific information identified since the 2004 scoping period that is pertinent to the development of the Omnibus Amendment.

The comment period for that NOI closed on November 4, 2009. Since that time it has come to the Council's attention that comments submitted via e-mail may not have been delivered. This problem did not impact written comments submitted through the mail or by fax.

However, the Council has decided to reopen the comment period and encourages individuals that submitted information through e-mail to resubmit their comments. For additional information regarding this action, please consult the prior NOI cited above.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 2, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9–29065 Filed 12–04–09; 8:45 am]

**BILLING CODE 3510–22–S**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A–201–805]

**Certain Circular Welded Non–Alloy Steel Pipe From Mexico; Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded non–alloy steel pipe from Mexico. This administrative review covers mandatory respondents Mueller Comercial de Mexico, S. de R.L. (Mueller) and Tuberia Nacional, S.A. de C.V. (TUNA). The Department also selected Hylsa S.A. de C.V. (Hylsa) as a mandatory respondent for this review. Hylsa was subject to a concurrent changed circumstances review of this order. In its changed circumstances review the Department determined Ternium Mexico, S.A. de C.V. (Ternium) is the successor-in-interest to Hylsa. *See Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy*

*Steel Pipe and Tube from Mexico*, 74 FR 41681 (August 18, 2009) (*Final Results Changed Circumstances Review*).

Therefore, we are treating Ternium as the successor-in-interest to Hylsa for these preliminary results and consider them a single entity (*see* “Background” section of this notice for further explanation). The period of review (POR) is November 1, 2007 through October 31, 2008.

We preliminarily determine that sales of subject merchandise have been made at less than normal value (NV) because two of the three companies, Ternium and Mueller, refused to cooperate with the Department in the conduct of this administrative review. We also are preliminarily rescinding this administrative review in part with respect to respondent TUNA, which has claimed it made no shipments of subject merchandise during the POR. The Department's review of import data supported TUNA's claim (*see* “TUNA's No–Shipment Claim” section of this notice for further explanation). Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Maryanne Burke or Robert James AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5604 or (202) 482–0469, respectively.

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

On November 2, 1992, the Department published the antidumping duty order on certain circular welded non–alloy steel pipe from Mexico. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non–Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non–Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) (*Antidumping Duty Order*). On November 3, 2008, the Department published the opportunity to request an administrative review of, *inter alia*, certain circular welded non–alloy steel pipe from Mexico for the period November 1, 2007 through October 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 65288 (November 3, 2008). In response, on December 1, 2008, United States Steel Corporation (U.S. Steel)

requested that the Department conduct an administrative review of entries of subject merchandise made by seven Mexican producers, including, TUNA, Mueller, Hylsa, Niples del Norte, S.A. de C.V. (Niples del Norte), Productos Laminados de Aceros, S.A. de C.V. (Productos Laminados), Tuberias Procasa S.A. de C.V./Tuberias Procarsa S.A. de C.V. (Tuberias Procasa/Tuberias Procarsa) and PYTCO, S.A. de C.V. (PYTCO).<sup>1</sup>

Also, on December 1, 2008, the Department received a request for review from Ternium to conduct an administrative review of its U.S. sales and those of its affiliates. In its request for review, counsel for Ternium indicated its predecessor was Hylsa. Ternium added it had provided information detailing its relationship with Hylsa on the record of the concurrent changed circumstances review of this order (*see Initiation of Antidumping Duty Changed Circumstances Review: Circular Welded Non-Alloy Steel Pipe from Mexico*, 73 FR 63682 (October 27, 2008)). Additionally, on December 1, 2008, the Department received a request from Mueller and its affiliated importer, Southland Pipe Nipples Co., Inc. (Southland), to conduct an administrative review. Southland requested the Department conduct an administrative review of Southland's entries and imports of merchandise produced and/or exported by Mueller. On December 24, 2008, the Department initiated a review of the eight companies, including Hylsa and Ternium, that produced or exported subject merchandise for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008).

On January 21, 2009, the Department released U.S. Customs and Border Protection (CBP) data for entries of the subject merchandise during the POR to all parties granted access to business proprietary information under the Department's Administrative Protective Order (APO) in this segment of the proceeding and invited such parties to comment on these data for purposes of respondent selection in this review.

On January 23, 2009, TUNA informed the Department that it had no shipments or entries of subject merchandise to the United States during the POR. Further,

TUNA requested the Department rescind this administrative review with respect to TUNA because it did not have any reviewable entries, shipments or sales of subject merchandise to the United States during the POR.

On January 28, 2009, U.S. Steel commented on the Department's CBP data and rebutted TUNA's claim that it had no shipments to the United States during the POR.

On February 9, 2009, TUNA responded to U.S. Steel's arguments concerning the CBP data claiming it did not have knowledge the merchandise would be exported to the United States at the time of sale. Rather, TUNA explained that it sold pipe within the scope of this review to unaffiliated customers in the home market and that some of those customers exported such material. TUNA certified that it does not know the final destination or where the pipe will be exported at the time of sale and argued the Department has treated such home-market sales as "co-export" sales in prior administrative reviews of this order.

On March 10, 2009, the Department determined it was not practicable to examine all eight producers of subject merchandise and issued a memorandum indicating its intention to limit the number of respondents selected for review to the three largest companies by export volume. These three respondents were TUNA, Hylsa and Mueller. *See Memorandum to Richard O. Weible, "Selection of Respondents,"* dated March 10, 2009. On March 18, 2009, the Department issued its antidumping duty questionnaire to all three companies chosen as mandatory respondents in this review.

On March 24, 2009, U.S. Steel submitted a withdrawal of its request for reviews of Niples del Norte, Productos Laminados, Tuberias Procasa/Tuberias Procarsa and PYTCO of which the review was originally initiated. On May 6, 2009, the Department rescinded the review with respect to these four firms. *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 20919 (May 6, 2009).

With respect to the remaining mandatory respondents, the chronology of this review is as follows: On April 8, 2009, Hylsa jointly with Ternium submitted a letter to the Department indicating they would not be providing a response to the Department's March 18, 2009 antidumping questionnaire. At the same time, both entities withdrew Ternium's request for review and further asked the Department to extend the deadline described under 19 CFR

351.213(d)(1) and terminate the review with respect to Ternium and Hylsa.

On July 17, 2009, the Department issued a letter to counsel for Ternium and Hylsa in response to its April 8, 2009 submission. The Department informed Ternium and Hylsa that where an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may resort to the use of facts available, including inferences adverse to the party, in determining that party's margin. *See* letter to Ternium and Hylsa, dated July 17, 2009.

On April 22, 2009, TUNA stated it also would not be responding to the Department's antidumping questionnaire and reiterated it had no entries, exports or sales of subject merchandise to the United States during the POR. TUNA restated its position in its submission to the Department, dated November 10, 2009. (For a full discussion, *see* "TUNA's No-Shipment Claim" section below.)

On May 4, 2009, U.S. Steel submitted comments in response to Ternium's and Hylsa's joint letter, dated April 8, 2009. U.S. Steel argues there is no basis for withdrawal because it has not withdrawn its own request for review of Hylsa. (For a full discussion, *see* "Ternium" section below.)

We received Mueller's response to section A of the Department's questionnaire on April 22, 2009. On May 29, 2009, the deadline for the remainder of the questionnaire responses, Mueller and its affiliate Southland, informed the Department that they would not be providing any further questionnaire responses relevant to the instant administrative review. Mueller also requested the return of business proprietary information disclosed under the Department's APO, to which request the Department acceded in its October 6, 2009 letter to Mueller and Southland. *See* Letter from the Department to Mueller, dated October 6, 2009; *see also* Memorandum to the File, dated October 6, 2009; and Letter from the Department to U.S. Steel and all parties privy to the APO, dated October 7, 2009.

On June 15, 2009, U.S. Steel filed comments in response to the request for withdrawal from the review made by TUNA, Ternium and Mueller. On June 25, 2009, Mueller submitted comments in response to U.S. Steel's June 15, 2009 letter. On July 9, 2009, U.S. Steel submitted a response to Mueller's June 25, 2009 letter. On September 2, 2009, Mueller replied to U.S. Steel's July 9, 2009 comments. For a full summary of all comments concerning application of adverse facts available (AFA) filed by

<sup>1</sup> On January, 16, 2009, U.S. Steel submitted clarification of its original request for review of Tuberias Procasa S.A. de C.V. U.S. Steel stated Tuberias Procasa S.A. de C.V. is also referred to as Tuberias Procarsa S.A. de C.V. and confirmed both spellings refer to the same company.

Mueller and U.S. Steel, *see* Memorandum "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Use of Facts Available for Ternium and Mueller and the Corroboration of Secondary Information," dated November 30, 2009 (Facts Available Memorandum).

On July 21, 2009, the Department extended the deadline for the preliminary results of this review from August 2, 2009 to November 30, 2009. *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 35844 (July 21, 2009).

### Scope of the Order

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

The merchandise covered by the order and subject to this review are currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the

scope of these proceedings is dispositive.

### TUNA's No-Shipment Claim

TUNA maintains that while the CBP data placed on the record indicate there were shipments of the subject merchandise manufactured by TUNA during the POR, in fact, it was not the exporter for any entries. TUNA emphasizes it made "co-export sales" of subject standard pipe to a home-market customer, but that it had no knowledge at the time of sale that any of its domestic sales would be exported to the United States. As such, TUNA asserts it is appropriate to treat these sales as home-market sales, and thus it is not necessary for TUNA to respond to the Department's questionnaire.

TUNA originally submitted a "no-shipment" letter, dated January 23, 2009, in which the company claimed it did not have exports, sales, or entries of subject merchandise to the United States during the POR. Rather, TUNA asserts it made sales of subject merchandise to unaffiliated companies in the Mexican home market and believes some of those home market customers export the subject merchandise to the United States. However, TUNA insists it did not know where the material was destined at the time of TUNA's sale to its customers. TUNA states that sales made under such type of an arrangement are "co-export" sales and have been treated as home market sales in prior segments of this proceeding. Therefore, pursuant to 19 CFR 351.213(d)(3), TUNA requests we rescind this administrative review with respect to TUNA.

Meanwhile, on January 28, 2009, U.S. Steel submitted comments arguing TUNA's "no-shipment" claims are not supported by record evidence. With respect to "co-export" sales, U.S. Steel states the Department had in prior administrative reviews investigated sales by Ternium's predecessor, Hylsa, to home-market customers where the merchandise was exported to the United States. While U.S. Steel acknowledges such sales by Hylsa were determined to be home-market sales, U.S. Steel adds there is no evidence showing either that the Department investigated TUNA's sales of in-scope merchandise to home-market customers for export, or that it made any determination to classify such sales made by TUNA as home-market sales. Consequently, U.S. Steel maintains TUNA's characterization of its sales as "co-export" sales is unfounded and avers that the Department must investigate TUNA's claim it did not know, or have reason to know its merchandise was destined

for the United States. *See* U.S. Steel's Comments, dated January 28, 2009 at 4 and 5.

In its rebuttal comments, dated February 9, 2009, TUNA reiterates that it made "co-export" sales to home market customers in Mexico and argues the Department's long standing practice is to treat the first party in the chain of distribution that has knowledge of the U.S. destination of the merchandise as the proper party to be reviewed. Citing the Department's decision in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 5, 2006) and accompanying Issues and Decision Memorandum at Comment 1, TUNA states that knowledge is determined by considering such factors as:

- (1) whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to the Department that it knew that its shipments were destined for the United States.

*See* TUNA's Rebuttal Comments, dated February 9, 2009 at 2.

In light of the Department's "knowledge test" as outlined above, TUNA described its sales process and provided sample sales documentation which included a purchase order, internal order and sales invoice. TUNA states these documents do not identify the United States as the final destination and thus demonstrate it did not have knowledge its merchandise was destined for the United States. *Id.* at 3. TUNA maintains it also did not package or label the product as destined for the United States, nor did it prepare or sign shipping documents identifying the United States as the destination. Additionally, TUNA states it did not produce merchandise to a unique specification destined for the United States and, pursuant to the Department's own criteria, did not have knowledge at the time of sale that its products were destined for the United States. *Id.*

### Department Position

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a

particular exporter or producer if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise to the United States by that producer. On June 9, 2009, the Department investigated TUNA's "no shipment" claim by requesting further documentation from CBP (e.g., customs entry form CBP-7501, manufacturer certificates) using U.S. import data we released to interested parties on January 21, 2009. In particular, we selected certain entries listed in the import data which had identified TUNA as the manufacturer of subject merchandise. On June 19, 2009, and August 18, 2009, we received the requested information from CBP. On November 30, 2009, we placed these customs documents on the record of this proceeding.

From our examination of the customs entry documentation, we saw no evidence to suggest TUNA had made entries of subject merchandise to the United States. Rather, the documentation indicated sales were made to a certain home market customer and showed no indication that the merchandise's final destination would be the United States. Therefore, we did not receive any information from CBP that contradicted TUNA's claim that it did not have knowledge its merchandise would be exported to the United States during the POR. As a result, we preliminarily find TUNA had no knowledge its merchandise entered the United States and thus, we intend to rescind the administrative review with respect to TUNA. If we continue to find at the time of our final results that TUNA had no knowledge and made no shipments of subject merchandise during the POR, we will rescind the administrative review with respect to TUNA.

#### **Ternium and Hylsa**

On May 4, 2009, U.S. Steel submitted comments in response to Ternium and Hylsa's joint letter, dated April 8, 2009, requesting their rescission from the instant review. U.S. Steel argues the Department should continue its review with respect to Hylsa, because U.S. Steel did not withdraw its request. U.S. Steel argues the Department should establish Ternium as the successor-in-interest to Hylsa in the instant review, as determined in *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 74 FR 14957 (April 2, 2009) (*Wire Rod From Mexico*). U.S. Steel argues that in *Wire Rod From Mexico* the Department found "there was little

to no change in management structure, supplier relationships, production facilities, or customer base" between Hylsa and Ternium. See U.S. Steel Comments, dated May 4, 2009 at 4. Referencing 19 CFR 351.401(f)(1), U.S. Steel asserts the Department will treat two or more producers as a single entity when three criteria are satisfied:

- (1) the producers are affiliated; (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for the manipulation of price or costs of production.

See U.S. Steel Comments, dated May 4, 2009 at 5.

U.S. Steel argues that each criteria is met in this review. U.S. Steel argues that Ternium and Hylsa are "affiliated persons" within the statutory definition at section 771(33)(E) of the Act which states "{a}ny person directly owning, controlling, or holding power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization". See U.S. Steel Comments, dated May 4, 2009 at 5. According to U.S. Steel, Hylsa has demonstrated in its submissions placed on the record of the changed circumstances review of this order that it is a wholly owned subsidiary of Ternium and operates under the corporate framework of Ternium. *Id.* at 6 and 7. Additionally, U.S. Steel maintains Ternium and Hylsa use the same production facilities to produce subject merchandise. U.S. Steel maintains that on April 1, 2008, Hylsa's production and sales operations were transferred to Ternium and consequently, Ternium now produces subject merchandise at those facilities previously owned and operated by Hylsa. *Id.* at 6. Further, U.S. Steel states 19 CFR 351.401(f)(2) provides factors to consider in determining whether a significant potential for manipulation exists which include, *inter alia*, the level of common ownership and the extent to which the companies' operations are intertwined. See U.S. Steel Comments, dated May 4, 2009 at 6. Finally, U.S. Steel asserts that because Hylsa is wholly owned and operated by Ternium, both companies are intertwined and represent a significant potential for manipulation.

#### **Department Position**

The Department determines it is not necessary to conduct a successor-in-interest analysis in the context of the instant review. Rather, the Department

already made this determination in the changed circumstances review of this order, finding that Ternium is the successor-in-interest to Hylsa. See *Final Results Changed Circumstances Review*. Therefore, for purposes of the instant review we also consider Ternium the successor-in-interest to Hylsa. In the Department's letter to Ternium and Hylsa, dated July 17, 2009, we cited our findings in the preliminary results of the changed circumstances review of this order which found Ternium is the successor-in-interest to Hylsa for purposes of antidumping duty liability.<sup>2</sup> See *Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*, 74 FR 28883 (June 18, 2009) (*Preliminary Results Changed Circumstances Review*). The Department further stated that if the preliminary results of the changed circumstances review were affirmed in the final results of the changed circumstances review, we would apply Hylsa's antidumping duty rate determined in the instant review to its successor-in-interest, Ternium, both for cash deposit and assessment purposes. Ternium/Hylsa did not respond to the Department's letter. The *Preliminary Results Changed Circumstances Review* remained unchanged for the final results and the Department upheld its preliminary findings that Ternium is the successor-in-interest to Hylsa for antidumping duty cash deposit purposes. See *Final Results Changed Circumstances Review*.

Under 19 CFR 351.213(d)(1) the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Although Ternium withdrew its own request for review, we are not in a position to rescind this review. As noted, we have deemed Ternium is the successor-in-interest to Hylsa. Accordingly, Ternium remains subject to review because U.S. Steel did not withdraw its request for an administrative review of Hylsa. As such, the Department preliminarily determines this review should not be rescinded with respect to Ternium.

#### **Use of Facts Available**

Section 776(a)(2) of the Act, provides that if an interested party withholds

<sup>2</sup> The *Final Results Changed Circumstances Review* had not been published when the Department issued its July 17, 2009 letter. The final results were later published on August 18, 2009.

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

Because both Ternium and Mueller have not responded to the Department's original questionnaire in the instant administrative review, their actions constitute a refusal to provide information necessary to conduct the Department's antidumping analysis under sections 776(a)(2)(A) and (B) of the Act. Due to its refusal to participate in this review, Mueller has not responded to sections B, C and E of the Department's original questionnaire.<sup>3</sup> Similarly, because of Ternium's refusal to participate in the review it has not responded to sections A through E of the Department's original questionnaire. Thus, Mueller and Ternium withheld information requested by the Department's original questionnaire, and significantly impeded the administrative review. See section 776(a)(2)(A) and (C) of the Act. Therefore, we preliminarily determine to base the margin for Mueller and Ternium on facts otherwise available,

pursuant to sections 776(a)(2)(A) and (C) of the Act.

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

In applying the facts otherwise available, section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, in reaching the applicable determination under this title the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) at 870 (SAA). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

Mueller failed to cooperate to the best of its ability by failing to answer sections B, C and E of the Department's questionnaire, and by withdrawing its previously submitted proprietary information from the record. Similarly, Ternium failed to cooperate to the best of its ability by failing to answer sections A through E of the Department's questionnaire. As a result, we determine that both Mueller and Ternium failed to cooperate by not acting to the best of their ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where a respondent failed to respond to subsequent antidumping questionnaires).

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

Section 776(b) of the Act provides that the Department may use as AFA information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the

record. When selecting an AFA rate from among the possible sources of information, the Department's practice has been to ensure the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner. See e.g., *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

Accordingly, as total AFA, we have assigned Mueller and Ternium the rate of 48.33 percent, which is the highest calculated transaction-specific margin from the most recently completed administrative review of this antidumping duty order. See *Circular Welded Non-Alloy Steel Pipe From Mexico: Amended Final Results of Antidumping Duty Administrative Review*, 66 FR 37454 (July 18, 2001); see also *Magnesium Metal From the Russian Federation: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 39919 (August 10, 2009) (single-highest transaction margin assigned as AFA to respondent AVISMA); and Facts Available Memorandum. We find this rate is sufficiently adverse to serve the purpose of facts available and is appropriate, as it is the highest transaction-specific margin determined in the most recently completed review.

Section 776(c) of the Act provides that, to the extent practicable, the Department shall corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information. See SAA at 870; *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004). The word "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). To corroborate secondary information, the Department will examine, to the extent

<sup>3</sup> Mueller was subject to its first administrative review and was not required to respond to section D (Cost of Production/Constructed Value). Section E of the questionnaire requests information of products covered by this review which underwent additional processing in the United States before they were delivered to unaffiliated customers.

practicable, the reliability and relevance of the information used.

As fully explained in the Facts Available Memorandum, the Department finds the rate of 48.33 percent to be reliable and relevant for use as AFA. As such, the Department finds this rate to be corroborated to the extent practicable consistent with section 776(c) of Act. We have, therefore, selected the rate of 48.33 percent to apply as an AFA rate to Mueller and Ternium and consider it to be sufficiently high so as to encourage participation in future segments of this proceeding. See Facts Available Memorandum.

### Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins exist for the period November 1, 2007, through October 31, 2008:

Manufacturer/Exporter	Weighted-Average Margin (percent-age)
Ternium (formerly known as Hylsa) .....	48.33 percent
Mueller .....	48.33 percent

### Disclosure and Public Comment

We will disclose pertinent memoranda concerning these preliminary results to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. See 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. See 19 CFR 351.309(d). Any hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results in the **Federal Register**.

### Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total AFA to establish Mueller's and Ternium's dumping margin, we will instruct CBP to apply a dumping margin of 48.33 percent *ad valorem* to all entries of subject merchandise during the POR that was produced and/or exported by Mueller and Ternium. The Department intends to issue instructions to CBP 41 days after the publication of the final results of review.

### Cash Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) the cash-deposit rate for Mueller and Ternium (formerly known as Hylsa) will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, 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, a prior review, or the less-than-fair-value (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 subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation which is 32.62 percent. See *Antidumping Duty Order*. These cash-deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

The preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### U.S. Travel and Tourism Advisory Board

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Reopening of the Application Period for Membership on the U.S. Travel and Tourism Advisory Board.

**SUMMARY:** On July 24, 2009, the Department of Commerce's International Trade Administration published a notice in the **Federal Register** (74 FR 36667) soliciting applications for persons to serve on the U.S. Travel and Tourism Advisory Board (Board). The July 24, 2009 notice provided that all applications must be received by the Office of Advisory Committees of the Department of Commerce by close of business on August 20, 2009. This notice reopens the application period in order to provide the public with an additional opportunity to submit applications. The evaluation criteria for selecting members contained in the July 24, 2009 notice shall continue to apply, with the additional requirement that members cannot be a federally-registered lobbyist. The purpose of the Board is to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

**ADDRESSES:** Please submit application information to J. Marc Chittum, Office of Advisory Committees, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.