

meters equivalent. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

Dated: December 10, 2010.

Sergio Botero,

Acting Deputy Assistant Secretary for Textiles and Apparel.

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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. de C.V. (Mueller) and Ternium Mexico, S.A. de C.V. (Ternium). Tuberia Nacional, S.A. de C.V. (TUNA) is subject to a concurrent changed circumstances review of this order; in its changed circumstances review, the Department has preliminarily determined that Lamina y Placa Comercial, S.A. de C.V. (Lamina) is the successor-in-interest to TUNA. *See Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*, 75 FR 67685 (November 3, 2010). Therefore, we are continuing to refer to this entity as TUNA for these preliminary results, pending a final determination. The period of review (POR) is November 1, 2008, through October 31, 2009.

We preliminarily determine that sales of subject merchandise have been made at less than normal value (NV). One of the companies, Ternium, refused to cooperate with the Department in this administrative review. We have calculated a dumping margin for Mueller. We preliminarily determine that TUNA had no reviewable sales, shipments, or entries during the POR. The Department's review of import data supported TUNA's claim (*see* "TUNA's No-Shipments Claim" section of this notice for further explanation).

Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 15, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Flessner 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) 482-6312 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 2, 2009, the Department published a notice of opportunity to request an administrative review in the **Federal Register**. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 56573 (November 2, 2009). On November 30, 2009, the Department received requests for administrative review of Ternium (including its affiliates Hylsa, Ternium Grupo IMSA, and Galvak), TUNA, and Mueller from petitioners Allied Tube and Conduit Corp. (Allied) and TMK IPSCO; respondents Mueller and TUNA also submitted requests for administrative review on that day. On December 23, 2009, the Department published a **Federal Register** notice initiating an antidumping administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229 (December 23, 2009). On December 28, 2009, TUNA withdrew its request for an administrative review. However, the Department did not terminate the review with regard to TUNA because petitioners had timely requested a review of TUNA. On January 6, 2010, the Department issued its antidumping questionnaire to Mueller, TUNA, and Ternium.

On February 5, 2010, Ternium and TUNA notified the Department that they would not submit responses to the Department's questionnaire; TUNA did so with a no-shipments claim. With

regard to TUNA's no-shipments claim, on February 17, 2010, petitioners Allied and TMK IPSCO submitted comments; on August 4, 2010, they submitted further comments. On August 16, 2010, TUNA replied to the petitioner's comments. On August 31, 2010, the Department issued a supplemental questionnaire to TUNA concerning its U.S. sales of mechanical tubing. On September 8, 2010, TUNA submitted its response to the supplemental questionnaire concerning mechanical tubing.

With respect to sales data, on February 26, 2010, Mueller submitted its response to section A of the questionnaire; on March 19, 2010, Mueller submitted its sections B and C response to the questionnaire. On May 25, 2010, the Department issued its first supplemental section A, B, and C questionnaire to Mueller. On June 4, 2010, Mueller submitted its responses to the first supplemental section A, B, and C questionnaire. On June 24, 2010, Mueller submitted a clarification of its first supplemental section A questionnaire response. On June 17, 2010, the Department issued its second supplemental section A, B, and C questionnaire to Mueller. On July 14, 2010, Mueller submitted its response to the second supplemental section A questionnaire; on July 16, 2010, Mueller submitted its response to the second supplemental sections B and C questionnaire. On July 19, 2010, Mueller submitted corrections to its response to the second supplemental sections B and C questionnaire. On December 1, 2010, Mueller submitted revised home and U.S. market databases in response to the Department's request made at the end of verification (*see* "Verification" section below).

On April 8, 2010, petitioner U.S. Steel alleged that Mueller had made sales below the cost of production (COP) during the POR. On June 30, 2010, the Department required both TUNA and Ternium¹ to submit COP data. *See the memorandum from Maryanne Burke to the file entitled "Administrative Review of Circular Welded Non-Alloy Steel Pipe from Mexico: Mueller Comercial de Mexico, S. de R.L. de C.V. and Southland Pipe Nipples Company, Inc.,"* dated June 30, 2010. On July 13, 2010, the Department issued supplemental section D questionnaires to Ternium, TUNA, and Mueller. On August 20, 2010, Ternium, TUNA, and Mueller each submitted a response to the section

¹ Though U.S. Steel's April 8, 2010, allegation was directed at Mueller, we required Mueller to obtain and report COP information from TUNA and Ternium because these suppliers produced subject merchandise sold by Mueller.

D questionnaire. On October 1, 2010, U.S. Steel submitted comments on the respondents' cost data submissions. On October 12, 2010, the Department issued supplemental section D questionnaires to TUNA and Mueller; on October 13, 2010, the Department issued a supplemental section D questionnaire to Ternium. On November 8, 2010, TUNA, Mueller, and Ternium submitted their responses to the Department's first supplemental section D questionnaires. On November 24, 2010, U.S. Steel submitted comments with regard to the section D responses of Mueller, TUNA, and Ternium. On December 1, 2010, Mueller submitted a response to U.S. Steel's comments with regard to the section D responses of Mueller, TUNA, and Ternium.

On July 29, 2010, the Department extended the deadline for the preliminary results of this review from August 9, 2010, to December 7, 2010. *See Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 44763 (July 29, 2010).

Verification

As provided in section 782(i) of the Act, and 19 CFR 351.307, we conducted a verification of Mueller's sales responses on October 25–29, 2010, in Monterrey, Mexico. We conducted a verification of TUNA's no-shipment claim on November 1–3, 2010, in Monterrey, Mexico. We used standard verification procedures, including on-site inspection of both companies' facilities. Because there was insufficient time to complete the verification report for the preliminary results of review, we are unable to consider verification report findings for purposes of these preliminary results but intend to consider them in the final results. However, Mueller submitted sales data on December 1, 2010, based on revisions discussed at the verifications; we have used this data in our margin calculations for Mueller. Interested parties will have an opportunity to comment on the verification memoranda in their case briefs. *See* "Disclosure and Public Comment" section below.

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.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). However, if the Department is satisfied that "a different date * * * better reflects the date on which the exporter or producer establishes the material terms of sale," the Department may choose a different date. *Id.* Mueller has reported the invoice date as the sale date. In Mueller's normal books and records, invoice date is recorded as the date of sale. However, changes in prices or quantities do occur. *See* Mueller's July 16, 2010, supplemental questionnaire response at 21–22. Therefore, the Department preliminarily determines that the invoice date is the date of sale provided that the invoice is issued on or before the shipment date; the shipment date will be used as the date of sale

where the invoice is issued after the shipment date. *See* Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Preliminary Results Analysis Memorandum for Mueller Comercial de Mexico, S. de R.L., dated December 7, 2010 (Analysis Memorandum), for further discussion of date of sale. A public version of this memorandum is on file in the Department's Central Records Unit (CRU) located in Room 7046 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Sales Made Through Affiliated Resellers

Mueller has two U.S. affiliates who sold subject merchandise in the United States during the POR to unaffiliated customers. The first is Southland Pipe and Nipples Company, Inc. (Southland), which is Mueller's importer-of-record for direct sales in the United States. *See* "Export Price" section, below; *see also* Mueller's section A response at 3–4. The second is Mueller Streamline Co. (Streamline). Streamline sells Mueller's subject merchandise to unaffiliated customers in the United States out of inventory maintained in warehouses in the United States for many of its sales; for others, it makes sales in which Mueller's subject merchandise is shipped directly from Mueller's facilities in Mexico ("indent sales"). *Id.* *See* "Constructed Export Price" section, below. Mueller, Southland, and Streamline are wholly-owned subsidiaries of Mueller Industries, Inc. *Id.* For these preliminary results of review, we have included both Southland's and Streamline's sales of subject merchandise to unaffiliated customers in the United States in our margin calculation. Mueller made no sales to affiliates in the home market. *See* Mueller's section A response at 14.

Fair Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe and tube from Mexico to the United States were made at less than fair value (LTFV), we compared EP and CEP sales made in the United States by Mueller, Southland, and Streamline to unaffiliated purchasers to NV as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared individual EP and CEP sales prices to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act we considered all products produced by Mueller covered by the description in the "Scope of the Order" section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) nominal pipe size; (3) wall thickness; (4) surface coating; and (5) end-finish. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's original January 6, 2010, questionnaire.

Export Price (EP)

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for a number of Mueller's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated.

As mentioned above, Southland is Mueller's importer-of-record for direct sales in the United States. See Mueller's section A response at 3-4. These sales are made prior to importation and shipped directly from Mueller's facilities to the unaffiliated U.S. customer. Mueller therefore treated these sales as EP sales. *Id.*

We based EP on the packed, delivered duty paid, cost and freight (C&F) or free on board (FOB) prices to unaffiliated customers in the United States. Mueller reported discounts for which we accounted in the margin program. See Analysis Memorandum. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from the mill to the U.S. border, inland freight from the border to the customer or warehouse, and U.S. brokerage and handling. In addition, we made

adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c) by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Constructed Export Price

Mueller stated it made CEP sales through its U.S. affiliate, Streamline, by two methods during the POR. The first was sales of Mueller subject merchandise by Streamline from Streamline's U.S. warehouses ("warehouse sales"). The second was sales of Mueller subject merchandise by Streamline in which Mueller shipped its product directly to the Streamline customer ("indent sales"). For all sales under each method, Southland was the actual seller to Streamline. See Mueller's section A response at pages 3-4.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We preliminarily find Mueller properly classified all of its U.S. sales of subject merchandise through its U.S. affiliate Streamline as CEP transactions because such sales were made in the United States to unaffiliated purchasers. We based CEP on packed prices to unaffiliated purchasers in the United States sold by Streamline. We made adjustments for billing adjustments, discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage and handling, and U.S. warehousing expenses. As directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit expenses and warranty expenses), inventory carrying costs, packing costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. See Analysis Memorandum.

Because Streamline neither segregates product in its warehouses according to manufacturer, nor records the manufacturer when the subject

merchandise is entered into its warehouses, Streamline and Mueller are unable to state with certainty which of Mueller's suppliers manufactured the particular subject merchandise in any given Streamline "warehouse sale." However, Mueller is able to report the percentage manufactured by its suppliers (for each diameter and surface coating) which it shipped to Streamline warehouses. Applying these percentages, a percentage for each manufacturer can be assigned for each such sale. We preliminarily determine that this methodology is the best available and have used it in the margin program.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. See 19 CFR 351.412(c)(1)(ii).

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See, *e.g.*, *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), results unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005); see also *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From*

Canada, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d)(3) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–15 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

Mueller reported it sold circular welded non-alloy steel pipe and tube to end-users and distributors in the home market and to end-users in the United States. For the home market, Mueller identified two channels of distribution: Direct shipments (channel 1) and warehouse shipments (channel 2). See Mueller's section A response at 14–15 and Exhibit A–5. For the U.S. market, Mueller identified two channels of distribution: Direct sales (channel 1) and indirect sales (channel 2). *Id.* Mueller stated that “a level-of-trade adjustment cannot be established;” rather, a CEP offset was requested. See Mueller's section B response at 28.

We obtained information from Mueller regarding the marketing stages involved in making its reported home market and U.S. sales. See Mueller's July 16, 2010, supplemental questionnaire response at 13–19. We reviewed Mueller's claims concerning the intensity to which all selling functions were performed for each home market channel of distribution and customer category. Based on our analysis of all of Mueller's home market selling functions, we agree with Mueller's conclusion that a level-of-trade adjustment cannot be established. We further conclude that there is a single level of trade in the home market.

In the U.S. market, Mueller did not report multiple levels of trade for EP sales. Accordingly, we agree with Mueller and preliminarily determine that all EP sales were made at the same LOT.

We compared Mueller's EP level of trade to the single NV level of trade found in the home market. While we find differences in the levels of intensity performed for some of these functions between the home market NV level of trade and the EP level of trade, such

differences are minor and do not establish distinct levels of trade between the home market and the U.S. market. Based on our analysis of all of Mueller's home market and EP selling functions, we find these sales were made at the same level of trade.

For CEP sales, Mueller claims that the number and intensity of selling functions performed by Mueller in making its sales to Streamline are lower than the number and intensity of selling functions Mueller performed for its EP sales, and further claims that CEP sales are at a less advanced stage than home market sales. See Mueller's July 16, 2010, supplemental questionnaire response at 13–19.

We compared the NV LOT (based on the selling activities associated with the transactions between Mueller and its customers in the home market) to the CEP LOT (which is based on the selling activities associated with the transaction between Mueller and its affiliated importer, Streamline). Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Streamline. For example, in comparing Mueller's selling activities, we find many of the reported selling functions performed in the home market are not performed with respect to CEP sales in the U.S. market. For those selling activities performed for both home market sales and CEP sales, Mueller reported it performed each activity at either the same or at a higher level of intensity in one or both of the home market channels of distribution. See Mueller's July 16, 2010 supplemental questionnaire response at Exhibit SA–10. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the U.S. sales. See 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is

at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Mueller's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Mueller's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. See, *e.g.*, Mueller's July 16, 2010, supplemental questionnaire response (revised home market and U.S. sales databases).

B. Cost of Production Analysis

In response to a timely allegation from U.S. Steel, and in accordance with section 773(b)(1) of the Act, we initiated an investigation to determine whether Mueller made home market sales of the foreign like product at prices below its cost of production during the POR. Because Mueller is a re-seller of pipe, and not a manufacturer, we solicited COP data from its two principal suppliers, TUNA and Ternium. We also requested that Mueller report its costs for the further processing it performs (*e.g.*, threading or cutting to length) on the pipe it purchases from TUNA and Ternium.

In accordance with section 773(b)(3)(A) of the Act, we calculated COP based on the sum of the supplier's cost of materials, fabrication or other processing employed in producing the foreign like product. In accordance with section 773(b)(3)(B) and (C) of the Act, we included amounts for SG&A expenses and packing costs. For pipe further processed by Mueller, we added the costs of materials, direct labor and variable overhead incurred by Mueller. We also included amounts for Mueller's SG&A expenses and packing costs, if any. Based on the review of record evidence, Mueller did not appear to experience significant changes in cost of manufacturing during the period of review. Therefore, we followed our normal methodology of calculating an annual weighted-average cost. We relied

on home market sales and COP information provided by Mueller, TUNA and Ternium in their respective section D questionnaire responses, except as noted below:

For Mueller, we adjusted the reported depreciation, G&A, and financial expenses. For additional details, *see* the memorandum from Heidi K. Schriefer to Neal M. Halper entitled “Cost of Production Adjustments for the Preliminary Results—Mueller Comercial de Mexico, S. de R.L. de C.V.” dated December 7, 2010.

For TUNA, we adjusted the reported hot-rolled coil, G&A and financial expenses. For additional details, *see* the memorandum from Heidi K. Schriefer to Neal M. Halper entitled “Cost of Production Adjustments for the Preliminary Results—Tuberia Nacional, S.A. de C.V.” dated December 7, 2010.

For Ternium, we adjusted the reported G&A and financial expenses. Due to time constraints, the Department has accepted Ternium’s submissions, as adjusted, for the preliminary results. However, we note that there are several outstanding issues which include Ternium’s failure to provide an overall reconciliation and to account for the cost differences associated with dimensional physical characteristics which will need to be resolved for the final results. For additional details on the adjustments made to Ternium’s submissions for the preliminary results, *see* the memorandum from Heidi K. Schriefer to Neal M. Halper entitled “Cost of Production Adjustments for the Preliminary Results—Ternium Mexico, S.A. de C.V.” dated December 7, 2010.

In determining whether to disregard home market sales made at prices below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made within an extended period of time and in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review.

Where less than 20 percent of the respondent’s home market sales of a given model are at prices below the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales are not made within an extended period of time and in “substantial quantities.” Where 20 percent or more of the respondent’s home market sales of a given model are at prices less than the

COP, we disregarded the below-cost sales; because: (1) They were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Mueller revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Affiliated Party Transactions and Arm’s-Length Test

Mueller made no sales to affiliates in the home market. *See* Mueller’s section A response at 14.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV as described above in the “Cost of Production Analysis” section of this notice, plus profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Mueller reported home market sales in Mexican pesos during the POR. *See* Mueller’s section B response at Exhibit B–1. We accounted for billing adjustments, discounts, and rebates, and advertising expenses where appropriate. We also made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise

compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In particular, we made COS adjustments for imputed credit expenses and warranty expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

F. Price-to-CV Comparisons

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

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 originally submitted a “no-shipment” letter, dated February 5, 2010, 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 explains the sales in question were “co-export” sales and, thus, exempt from the value-added tax (VAT) normally collected on sales in the domestic market. However, TUNA insists that at the time of sale, it has no idea which shipments of pipe are actually destined for the United States. Accordingly, TUNA requests, pursuant to 19 CFR 351.213(d)(3), that we rescind this administrative review with respect to TUNA.

Meanwhile, on February 17, 2010, Allied and TMK IPSCO submitted comments arguing TUNA’s “no-shipment” claims are not supported by record evidence. Allied and TMK IPSCO urged the Department to gather more information regarding TUNA’s sales to an unaffiliated exporter. According to Allied and TMK IPSCO, the nature of TUNA’s home market sales pursuant to Mexico’s IMMEX “co-export” program made it highly probable TUNA knew at the time of the sale that its merchandise

was destined for the United States. Allied and TMK IPSCO also urged the Department to gather more information from U.S. Customs and Border Protection (CBP), such as Customs Forms 7501 and other import documentation. *See* Allied and TMK IPSCO's letter dated February 17, 2010.

The Department did, in fact, solicit additional information from both TUNA and CBP. *See, e.g.*, Memorandum from Richard Weible, Director, Office 7 to Michael Walsh, Director, AD/CVD Revenue Policy & Programs, U.S. Customs and Border Protection, dated May 3, 2010 (entering on the record entry documentation for selected TUNA entries). In addition, between November 1 and November 3, 2010, the Department conducted an on-site verification of TUNA's no shipment claims.

From our examination of the customs entry documentation, we saw no evidence to suggest TUNA had made any reviewable entries of subject merchandise to the United States. Rather, the documentation indicated sales were made to a certain home market customer under Mexico's IMMEX co-export program. *See* Mueller's July 14, 2010, supplemental questionnaire response at Exhibit S-5. While TUNA had a general knowledge that some of its pipe would be exported—perhaps to the United States or elsewhere—it did not know which specific pipes would be exported to the United States at the time of its sale to its customer. *See* Mueller's section A response at 5. Therefore, we find the record provides no information to contradict TUNA's claim that, at the time of its sales to the home market customer, it did not have knowledge its merchandise would be exported to the United States. As a result, we preliminarily find TUNA had no knowledge its merchandise entered the United States and is, therefore, not properly subject to review.

Use of Facts Available

Section 776(a)(2) of the Act, provides that if an interested party withholds information requested by the administering authority, or 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), or 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, then 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 Ternium has not responded to sections A, B, or C of the Department's original questionnaire in the instant administrative review, its 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. Thus, 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 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). Ternium failed to cooperate to the best of its ability by failing to answer sections A, B, or C of the Department's questionnaire. As a result, we determine that Ternium failed to cooperate by not acting to the best of its 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).²

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 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 in which a rate was calculated. *See Circular Welded Non-Alloy Steel Pipe From Mexico: Amended Final Results of Antidumping Duty Administrative Review*, 66 FR 37454 (July 18, 2001); *see*

² Ternium submitted no response to the Department's section A, B, or C questionnaires during the course of this review. Ternium did, however, submit a response to the Department's section D questionnaire with respect to subject merchandise manufactured by Ternium which was exported to the United States by Mueller. Sales by Mueller or its affiliates will be assessed at the Mueller rate without the use of adverse inferences; otherwise, sales of subject merchandise manufactured by Ternium will be assessed at a rate determined from facts available. *See* “Preliminary Results of Review” and “Assessment” sections below.

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). See Memorandum from Christian Marsh to Paul Piquado entitled "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Use of Facts Available for Ternium and the Corroboration of Secondary Information," dated December 7, 2010 (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 in which a rate was calculated.

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 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. See Facts Available Memorandum at 7–8. 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 Ternium and consider it to be sufficiently high so as to encourage participation in future segments of this proceeding.

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, 2008, through October 31, 2009:

Manufacturer/exporter	Weighted-average margin (percentage)
Ternium (formerly known as Hylsa ³)	48.33
Mueller	4.81

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). We shall be releasing the sales verification reports from this administrative review with sufficient time to allow parties to comment upon their contents. 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 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**.

³ Ternium is the successor in interest to Hylsa, S.A. de C.V. 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).

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. Mueller has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Because we are relying on total AFA to establish 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 Ternium (except those entries produced by Ternium and exported by Mueller, to which the Mueller assessment will apply). In accordance with 19 CFR 356.8(a), the Department intends to issue appropriate assessment instructions directly to CBP on or after 41 days following 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 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: December 7, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-31517 Filed 12-14-10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-819]

Certain Pasta From Italy: Preliminary Results of Countervailing Duty Changed Circumstances Review and Intent To Revoke, In Part

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

SUMMARY: On September 17, 2010, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review and consideration of revocation, in part, of the countervailing duty order on certain pasta from Italy. *See Certain Pasta From Italy: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of Order, in Part*, 75 FR 56992 (September 17, 2010) ("Initiation Notice"). The Department confirmed that New World Pasta Company, Dakota Growers Pasta

Company, and American Italian Pasta Company (collectively "Petitioners") have no interest in countervailing duty relief from imports of gluten-free pasta. Therefore, we are notifying the public of our intent to revoke, in part, the countervailing duty order as it relates to imports of gluten-free pasta, as described below. The Department invites interested parties to comment on these preliminary results.¹

DATES: *Effective Date:* December 15, 2010.

FOR FURTHER INFORMATION CONTACT:

Patricia Tran or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1503 and (202) 482-1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the countervailing duty ("CVD") order on certain pasta from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 29, 2010, the Department received a request on behalf of H.J. Heinz Company ("Heinz") to initiate a no-interest changed circumstance review and revocation, in part, of the CVD order on certain pasta from Italy with respect to gluten-free pasta. On September 17, 2010, the Department published a notice of initiation of changed circumstances review and consideration of revocation of order, in part, with respect to the CVD order on certain pasta from Italy and invited interested parties to comment. *See Initiation Notice.*

On September 27, 2010, Petitioners expressed a lack of interest in maintaining the order with respect to gluten-free pasta. *See Memorandum to the File from Austin Redington, International Trade Compliance Analyst, AD/CVD Operations Office 1, entitled "Changed Circumstance Review*

¹ On July 2, 2009, the Department published a notice of initiation and preliminary results of a changed circumstances review and intent to revoke, in part, the AD order of certain pasta from Italy, in part, with respect to gluten-free pasta. The Department gave interested parties an opportunity to comment on the preliminary results and notice of intent to revoke, but received no comments. The Department issued their final results on August 14, 2009 and revoked the AD order, in part, with respect to gluten-free pasta. *See Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

of Certain Pasta from Italy: Statement of No Opposition from Domestic Industry," dated October 13, 2010 ("No Opposition Memo"). On October 12, 2010, Heinz submitted comments, restating its request that the Department revoke the CVD order, in part, with respect to gluten-free pasta. On November 30, 2010, Petitioners confirmed that they represent "substantially all" of the production of the domestic like product. *See Memorandum to the File from Patricia Tran, Acting Program Manager, entitled "Ex Parte Memorandum: Phone Conversation with Counsel for Petitioners," dated November 30, 2010 ("Substantially All Memo").*

We received no comments to counter Heinz's request. Although we stated in the *Initiation Notice* that we would issue final results within 45 days if all parties agreed to the outcome, we have instead determined to publish these preliminary results of changed circumstances review and intent to revoke the order, in part, so that our intention to revoke is clear to parties and our determination may be commented upon, as set forth below. *See* 19 CFR 351.222(g)(3)(v).

Scope of Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order. *See Memorandum from Eric B. Greynolds to Melissa G. Skinner,*