

Dated: January 19, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

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[A-428-820]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Germany**

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

**EFFECTIVE DATE:** January 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Irene Darzenta, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4929 or 482-6320, respectively.

**PRELIMINARY DETERMINATION:** The Department of Commerce (the Department) preliminarily determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Germany (seamless pipe) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the notice of initiation published on July 20, 1994, (59 FR 37025), the following events have occurred.

On August 8, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (USITC Publication 2734, August 1994).

On August 19, 1994, we named Mannesmannrohrren-Werke AG (MRW) as the sole respondent in this investigation, and on the same date issued an antidumping questionnaire to this company. MRW accounted for at least 60 percent of the exports of the subject merchandise to the United States during the POI. Although it requested that it be allowed to respond voluntarily to the Department's questionnaire, on October 5, 1994, we informed Benteler A.G., another German producer, that we would not be accepting voluntary responses in this investigation due to administrative resource constraints.

On September 12, 1994, MRW submitted a response to Section A of the Department's questionnaire. Sections B and C were submitted on October 14, 1994. On October 11 and November 2, 1994, we received petitioner's comments regarding MRW's questionnaire responses. We issued a supplemental questionnaire on November 18, 1994. MRW submitted its supplemental response on December 9, 1994.

On October 21, 1994, we received comments on the issues of scope and class or kind of merchandise from interested parties, in response to the Department's invitation for such comments in its notice of initiation. On October 31 and November 17, 1994, we received rebuttal comments on this issue.

On October 27, 1994, the Department received a request from petitioner to postpone the preliminary determination until January 19, 1995. On November 18, 1994, we published in the **Federal Register** (59 FR 59748), a notice announcing the postponement of the preliminary determination until not later than January 19, 1995, in accordance with 19 C.F.R. 353.15(c) and (d).

**Scope of Investigation**

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

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

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

**Specifications, Characteristics and Uses:** Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil

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

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

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

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

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

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

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

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

Specifically excluded from this investigation are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

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

### Scope Issues

In our notice of initiation we identified two issues which we intended to consider further. The first issue was whether to consider end-use a factor in defining the scope of these investigations.<sup>1</sup> The second issue was whether the seamless pipe subject to this investigation constitutes more than one class or kind of merchandise. In addition to these two issues, interested parties have raised a number of other issues regarding whether certain products should be excluded from the scope of this investigation. These issues are discussed below.

<sup>1</sup> Various parties in this investigation, as well as in the concurrent investigations involving the same product from Argentina, Italy, and Germany have raised issues and made arguments. For purposes of simplicity and consistency across investigations, we will discuss all of these issues in this notice.

Regarding the end-use issue, interested parties have submitted arguments about whether end-use should be maintained as a scope criterion in this investigation. After carefully considering these arguments, we have determined that, for purposes of this preliminary determination, we will continue to include end-use as a scope criterion. We agree with petitioner that pipe products identified as potential substitutes used in the same applications as products meeting the requisite ASTM specifications may fall within the same class or kind, and within the scope of any order issued in this investigation. However, we are well aware of the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties. We will strive to simplify any procedures used in this regard. We will, therefore, carefully consider any comment on this issue for purposes of our final determination.

Regarding the class or kind issue, although respondents propose dividing the scope of this investigation into two classes or kinds of merchandise, they do not agree on the merchandise characteristics that will define the two classes. The respondents in this investigation as well as the Brazilian investigation argue that the scope should be divided into two classes or kinds based on the material composition of the pipe—carbon versus alloy. The respondent in the Argentine investigation argues that the scope should be divided into two classes or kinds of merchandise based on size. Petitioner maintains that the subject merchandise constitutes a single class or kind.

We have considered the class or kind comments of the interested parties and have analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) the general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchasers; (4) the channels of trade; and (5) cost.

We note that certain differences exist between the physical characteristics of the various products (e.g., size, composition). In addition, there appear to be cost differences between the various products. However, the information on record is not sufficient to justify dividing the class or kind of merchandise. The record on ultimate use of the merchandise and the expectations of the ultimate purchasers

indicates that there is a strong possibility that there may be overlapping uses because any one of the various products in question may be used in different applications (e.g., line and pressure pipe). Also, based upon the evidence currently on the record, we determine that the similarities in the distribution channels used for each of the proposed classes of merchandise outweigh any differences in the distribution channels.

In conclusion, while we recognize that certain differences exist between the products in the proposed class or kind of merchandise, we find that the similarities are more significant. Therefore, for purposes of this preliminary determination, we will continue to consider the scope as covering one class or kind of merchandise. This preliminary decision is consistent with past cases concerning steel pipe products. (See e.g., *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil et al.*, 57 FR 42940, September 17, 1992). However, a number of issues with respect to class or kind remain to be clarified. We will provide the parties with another opportunity to submit additional information and argument for the final determination. For a complete discussion of the parties' comments, as well as the Department's analysis, see memorandum from Gary Taverman, Acting Director, Office of Antidumping Investigations to Barbara Stafford, Deputy Assistant Secretary for Investigations, dated January 19, 1995.

Regarding the additional issues concerning exclusion of certain products, one party requests that the Department specify that multiple-stencilled seamless pipe stencilled to non-subject standards is not covered. Furthermore, this party argues that the scope language should be clarified so that it specifically states that only standard, line, and pressure pipe stencilled to the ASTM A-106, ASTM A-53 or API-5L standards are included, and that we clarify the meaning of "mechanical tubing." In addition, this party requests that the Department exclude unfinished oil country tubular goods, ASTM A-519 pipe (a type of mechanical tubing) and mechanical tube made to customer specifications from the scope of this investigation.

Another party requests that the Department specifically exclude hollow seamless steel products produced in non-pipe sizes (known in the steel industry as tubes), from the scope of this investigation.

Because we currently have insufficient evidence to make a

determination regarding these requests, we are not yet in a position to address these concerns. Therefore, for purposes of this preliminary determination, we will not exclude these products from the scope of this investigation. Once again, we will collect additional information and consider additional argument before the final determination.

#### Period of Investigation

The period of investigation (POI) is January 1, 1994, to June 30, 1994.

#### Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B-099 of the main building of the Department.

#### Fair Value Comparisons

To determine whether sales of seamless pipe from MRW to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with 19 C.F.R. 353.58, we made comparisons at the same level of trade, where possible.

#### United States Price

We based USP on purchase price (PP), in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated PP based on packed prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, foreign inland freight, inland insurance, ocean freight, U.S. brokerage, U.S. duty, wharfage, and U.S. inland freight. In the one instance where foreign inland freight had a missing value, we assigned the average foreign inland freight amount for all other reported transactions to the missing value. We also made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Germany in

accordance with our practice, pursuant to the Court of International Trade's (CIT) decision in *Federal-Mogul Corp. and The Torrington Co. v. United States*, Slip Op. 93-194 (CIT October 7, 1993). (See Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France, 59 FR 14136, March 25, 1994). We recalculated VAT because respondent's calculation included discounts.

#### Foreign Market Value

In order to determine whether there were sufficient sales of seamless pipe in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of seamless pipe to the volume of third country sales of seamless pipe in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that MRW had a viable home market with respect to sales of seamless pipe during the POI.

In accordance with 19 C.F.R. 353.46, we calculated FMV based on prices charged to both related (when appropriate) and unrelated customers in Germany. We compared related party prices to unrelated party prices using the test set forth in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1994) and used in our FMV calculation those sales made to related parties that were at arm's length. We made deductions, where appropriate, for discounts and rebates. In instances where the reported quantity for certain sales was zero, we excluded these transactions from our analysis. In one instance where the reported rebate expense was negative, we set this expense for the particular transaction to zero.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 C.F.R. 353.56(a) and the exporter's sales price offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from FMV under the circumstance-of-sale provision of 19 C.F.R. 353.56(a). This adjustment included foreign inland freight.

Pursuant to 19 C.F.R. 353.56(a)(2), we made further circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranties and inspection expenses between the U.S. and home markets. With regard to credit expenses in the home market, given that respondent only provided month and year for shipment and payment dates, we set shipment date equal to the first day of the reported month and payment date equal to the last day of the reported month and then calculated imputed credit in accordance with our normal methodology. For both markets, we calculated an average number of credit days when shipment and payment dates were missing and used the date of the preliminary determination, January 19, 1995, as payment date when only payment dates were missing. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions.

We also deducted home market packing and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

We adjusted for VAT in accordance with our practice. (See the "United States Price" section of this notice, above.)

#### Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. See 19 C.F.R. 353.60(a).

#### Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of seamless pipe from Germany, as defined in the **Scope of Investigation** section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The estimated preliminary dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Mannesmannrohren-Werke AG ....	2.68%
All others .....	2.68%

### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

### Public Comment

In accordance with 19 C.F.R. 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 10, 1995, and rebuttal briefs no later than March 15, 1995. In accordance with 19 C.F.R. 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 17, 1995, at 2:00 p.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 C.F.R. 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 C.F.R. 353.15(a)(4).

Dated: January 19, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

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[A-475-814]

### Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy

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

**EFFECTIVE DATE:** January 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Jenkins or Kate Johnson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1756 or 482-4929, respectively.

**PRELIMINARY DETERMINATION:** The Department of Commerce (the Department) preliminarily determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Italy (seamless pipe) is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated *de minimis* margins are shown in the "Preliminary Margin" section of this notice.

### Case History

Since the notice of initiation published on July 20, 1994, (59 FR 37025), the following events have occurred.

On August 8, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (USITC Publication 2734, August 1994).

On August 19, 1994, we sent the antidumping questionnaire to Dalmine S.p.A., TAD USA, Inc., and Dalmine USA, Inc., (collectively "Dalmine"), because petitioner claimed that Dalmine was the sole producer of the subject merchandise exported to the United States from Italy during the period of investigation (POI). In order to determine if Dalmine accounted for over 60 percent of the exports to the United States and, accordingly, could be named as the sole respondent, we also sent an abbreviated version of Section A of the questionnaires to the following Italian producers named in the petition: Acciaierie e Tubificio Meridionali SpA, Pietra SpA-Acciaierie Ferriere e Tubifici (Pietra SpA), Tubicar SpA, Sandvik Italia SpA, and Seta Tubi Srl. On September 2 and 23, 1994, Dalmine provided volume and value data of sales of subject merchandise during the POI. Acciaierie e Tubificio Meridionali, Sandvik Italia and Tubicar SpA

informed the Department that they did not sell subject merchandise to the United States during the POI. Seta Tubi Srl's antidumping questionnaire was returned to the Department by the postal service as undeliverable because the address could not be found. We did not receive a response from Pietra SpA. However, Pietra SpA sent a facsimile to the U.S. Consulate in Milan in which it reported a small volume of shipments of the subject merchandise to the United States from January 1 to March 31, 1994. On September 27, 1994, we determined that Dalmine S.p.A. (Dalmine) should be the sole respondent in this investigation because it accounted for at least 60 percent of the exports of the subject merchandise to the United States during the POI.

On September 19, 1994, we received a request from Dalmine to exclude certain "outlier" sales from its United States and home market sales listings. On September 23, 1994, petitioner submitted its opposition to Dalmine's request. On September 26, 1994, Dalmine responded to petitioner's September 23, 1994, objections. We requested additional information from Dalmine concerning the "outlier" sales on September 30, 1994. Based on Dalmine's request, and after considering all comments received, on November 28, 1994, we informed Dalmine that it would be exempted from reporting certain "outlier" home market and U.S. sales.

On December 6 and 19, 1994, Dalmine requested that it be exempt from reporting an insignificant quantity of sales made by related resellers and sought clarification concerning which of its customers are "related parties." On December 12 and 22, 1994, we received comments from petitioner addressing Dalmine's request to exclude reporting certain related party sales. On January 19, 1995, after considering the additional request and considering comments, we also granted Dalmine an exemption from reporting an insignificant quantity of home market sales made by related resellers. The Department accepted Dalmine's definition of related party, as described in its B and C responses. Therefore, it was not necessary to provide additional guidance.

On September 23, 1994, we received Dalmine's response to Section A of the Department's questionnaire. Responses to Sections B and C of the questionnaire were submitted on October 7, 1994. On October 11, 1994, petitioner commented on Dalmine's Section A questionnaire response. On October 11 and 31, 1994, we received additional comments from petitioner regarding Dalmine's Sections