produce, and presumably dump, additional subject merchandise which requires annealing.

*Department Position:* These issues were addressed in the preliminary results wherein the Department indicated that it did not consider these factors conclusive. Final determinations regarding these points need not be reached in these final results since we not find that, due to the extensive of a non-*de-minimis* dumping margin in this review, Wolverine is not eligible for revocation pursuant to 19 CFR 353.25(a)(2).

## Final Results for the Review

As a result of our comparison of EP to NV, we determine that a dumping margin of 0.67 percent exists for Wolverine for the period January 1, 1996 through December 31, 1996, and we determine, not to revoke in part the antidumping duty order with respect to imports of subject merchandise from Wolverine.

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original 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 merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

## Notification of Interested Parties

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

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 9, 1998.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98–16106 Filed 6–16–98; 8:45 am]

BILLING CODE 3510–DS–M

---

# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–201–805]**

## Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review

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

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

**SUMMARY:** On December 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico covering exports of this merchandise to the United States by one manufacturer/exporter, Hylsa S.A. de C.V. (''Hylsa'') during the period November 1, 1995 through October 31, 1996. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Review,* 62 FR 64564 (*Preliminary Results*). We invited interested parties to comment on the preliminary results. We received comments and rebuttals from petitioners and Hylsa. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** June 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ilissa Kabak at (202) 482–0145 or John Kugelman at (202) 482–0649, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 C.F.R. Part 353 (April 1, 1997). Where appropriate, we have cited the Department's new regulations, codified at 19 C.F.R. 351 (62 FR 27296, May 19, 1997). While not binding on this review, the new regulations serve as a restatement of the Department's policies.

## Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1995/96 review period on November 4, 1996 (61 FR 56663). On November 27, 1996, respondents Hylsa and Tuberia Nacional S.A. de C.V. (''TUNA'') requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 16, 1996. *See* 61 FR 66017. On February 4, 1997, TUNA requested a withdrawal from the proceeding. Pursuant to 19 C.F.R. 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. TUNA's request for withdrawal was timely and there were no requests for review of TUNA from other

interested parties. Therefore, the Department terminated this review with respect to TUNA in the December 8, 1997 preliminary results of this administrative review in accordance with § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Under § 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing the preliminary results of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. The Department determined that timely completion was not practicable. Accordingly, on July 8, 1997, the Department published a notice of extension of the time limit for the preliminary results in this case to December 2, 1997. *See Extension of Time Limit for Antidumping Duty Administrative Review,* 62 FR 36488. We held a public hearing on February 20, 1998.

The Department has now completed this review in accordance with § 751(a) of the Act.

**Scope of the Review**

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.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) 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 HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

The period of review (POR) is November 1, 1995 through October 31, 1996. This review covers sales of circular welded non-alloy steel pipe and tube by Hylsa.

**Fair Value Comparisons**

To determine whether sales of subject merchandise from Mexico to the United States were made at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of the preliminary results of review notice (*see Preliminary Results* at 64565–64566). On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 133 F.3d 897 (Fed. Cir. 1998). In that case, which involved a determination by the Department under pre-URAA law, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* § 771(15) of the Act. Consequently, the Department has reconsidered its practice in light of this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with § 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

**Analysis of Comments Received**

We invited interested parties to comment on our preliminary results of review. We received both comments and rebuttals from petitioners and Hylsa. The following analysis addresses the issues raised by the parties in these comments and rebuttals.

*Comment 1: Reimbursement*

During the POR, Hylsa was the producer, exporter, and importer of record for all U.S. sales of subject merchandise. Hylsa's U.S. customs broker claims Hylsa as the importer of record on the customs entry document completed upon importation of subject merchandise. The broker then invoices Hylsa to reclaim the customs duties and service fees it incurred. Hylsa International Corporation (Hylsa International) is a U.S. company wholly-owned by Hylsa; it has no employees, nor does it perform any sales activities. Hylsa International is used by Hylsa as a conduit through which Hylsa passes sales invoices to, and collects payments from, its U.S. customers. To this end, Hylsa issues two invoices for its U.S. sales; one invoice is from Hylsa to Hylsa International while the other is from Hylsa International to the U.S. customer. The latter invoice is issued to the U.S. customer for purchase and payment records. The U.S. customer remits payment to Hylsa International's bank account, and Hylsa applies these payments to the customer account it maintains for Hylsa International. For a more detailed explanation of Hylsa International, see Sales Verification Report at 8.

Petitioners request that the Department apply the reimbursement regulation, 19 CFR § 353.26, in this administrative review by deducting the amount of antidumping duties paid by Hylsa on behalf of the importer, or reimbursed to the importer, from the export price. Petitioners object to the Department's interpretation of § 353.26 set forth in the preliminary results of this administrative review. The Department stated in the preliminary results that separate corporate entities must exist as producer/reseller and importer in order to invoke the

reimbursement regulation. Petitioners argue that, contrary to the Department's position, the regulation does not require that the producer/exporter and importer be separate entities. According to petitioners, the only case in which this situation was addressed was in the previously completed administrative review of this order. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico (Final Results of Pipe and Tube from Mexico),* 62 FR 37014 at 37017 (July 10, 1997) (Comment 4). There, petitioners aver, the Department did not decide this issue.

Petitioners state that cases in which the Department has discussed the application of the reimbursement regulation all involved the payment of duties by a foreign affiliate. In such cases, petitioners contend, the Department has not inferred that reimbursement has occurred from the mere fact of affiliation. To this end, petitioners cite *Certain Cut-to-Length Carbon Steel Plate from Germany,* 62 FR 18390 at 18394 (April 15, 1997) (Comment 6). On the other hand, petitioners argue, the Department has not hesitated in applying the reimbursement regulation in cases where there is evidence of the producer's direct payment of, or reimbursement for, antidumping duties incurred by an affiliated importer. *See Furfuryl Alcohol from the Republic of South Africa (Furfuryl Alcohol),* 62 FR 36488, 36490 (July 8, 1997) (preliminary results) and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands (Preliminary Results of Steel Products from the Netherlands),* 61 FR 51888, 51891 (October 4, 1996). According to petitioners, the Department has rejected the argument that since two affiliated parties are collapsed to calculate a dumping margin, the parties should also be collapsed under the reimbursement regulation (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (Pipe from Korea),* 62 FR 55574, 55580 (October 27, 1997) and *Color Television Receivers from the Republic of Korea (Color Television Receivers),* 61 FR 4408, 4411 (February 6, 1996)). Petitioners argue that, because the Department has not collapsed entities to apply the reimbursement regulation, we have not concluded whether the regulation can apply to a single entity. Additionally, because § 353.26 applies regardless of the affiliation between the producer/exporter and the importer, it would be inconsistent to apply the regulation in a case where the producer and importer are affiliated but not apply it when the producer and importer are a single entity. Petitioners state that the Department recognized this principle with regards to duty absorption in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 61 FR 65022 at 65023 (December 10, 1996) (preliminary results).

Petitioners note that in the few cases in which the Department has addressed the issue of reimbursement, it has demonstrated that the producers' direct payment of antidumping duties triggers § 353.26. Petitioners cite to *Brass Sheet and Strip from the Netherlands (Brass from the Netherlands*), 57 FR 9534 (March 19, 1992) (Comment 6) and *Color Television Receivers* at 4410–4411 in support of their position. Petitioners maintain that while the Department has previously stated that the reimbursement regulation cannot apply in cases where, as here, the importer *is* the exporter, the Department has, nevertheless, applied the reimbursement provision in cases with CEP sales without addressing concerns over the possibility of one party reimbursing itself. Petitioners refer to *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands (Final Results of Steel Products from the Netherlands),* 61 FR 48465 at 48470 (September 13, 1996) (Comment 17) and *Furfuryl Alcohol* at 36490.

However, petitioners state that if the Department continues to interpret the regulation as requiring two separate entities, we should find reimbursement in this case because two entities are, in fact, involved. Petitioners note that in the regulations the Department defines ''importer'' as ''the person by whom, or for whose account, the merchandise is imported.'' 19 CFR § 353.2(i). Petitioners argue that this definition may refer to more than one entity. In this case, they assert that while Hylsa may be the ''importer'' because it is ''the person by whom * * * the merchandise is imported,'' Hylsa International may also be considered an ''importer'' if it is the party ''for whose account * * * the merchandise is imported.'' Because Hylsa International is a separate legal entity that acts as a reseller for Hylsa's sales to U.S. customers, we may consider it to be the ''importer'' in this case. Therefore, petitioners argue that if Hylsa International is the ''importer,'' then the Department should find that Hylsa is paying U.S. antidumping duties on behalf of the ''importer'' within the framework of § 353.26.

Petitioners also assert that the reimbursement regulation applies even though assessment of antidumping duties has not occurred and cites *Final Results of Steel Products from the Netherlands* at 48470–71. According to petitioners, the Department has taken several approaches to implementing the reimbursement provisions. Petitioners note that in past cases, including the above referenced administrative review, we have ordered the U.S. Customs Service to double the duty assessment rates published in the final results instead of deducting the amount of antidumping duties from the export price when applying the reimbursement regulation. However, in the *Preliminary Results of Steel Products from the Netherlands,* the Department deducted the amount of antidumping duties to be paid from the export price. Petitioners urge the Department to adhere to the plain language of the regulation and deduct any antidumping duties paid by Hylsa from EP.

Hylsa counters that the reimbursement regulation is inapplicable in this case. Arguing that Hylsa is the ''importer,'' Hylsa notes that § 353.26 mandates the ''importer'' to file a pre-liquidation certificate with the appropriate District Director of Customs stating that the ''importer'' has not entered into any duty reimbursement agreement with the manufacturer, producer, seller, or exporter. Hylsa argues that since the importer of record is the only party required to provide this certification, the ''importer'' under the reimbursement regulation is defined as the ''importer of record.'' Since Hylsa International has not entered into any reimbursement agreement with Hylsa, respondent concludes, the reimbursement provision of § 353.26 does not apply.

Hylsa argues that the Department's interpretation of the regulation was correct in the preliminary results of this administrative review. The Department stated in the preliminary results that separate entities must exist as producer and/or seller and importer in order to apply the reimbursement regulation. Hylsa agrees that § 353.26 requires the participation of two separate corporate entities and that the regulation applies only when antidumping duty payments are made on behalf of the importer. Hylsa also agrees with the petitioners that the Department has never applied the reimbursement regulation in a case in which the producer/reseller and importer are the same corporate entity, but asserts, contrary to petitioners, that this is not a case of first impression. Hylsa argues that international sales made on a duty-paid basis are a normal part of international commerce. Therefore, the fact that the Department has not addressed the issue of reimbursement in these situations does

not mean that it has not previously been considered by the Department or that the Department does not have an established practice with regard to this issue. Rather, Hylsa argues that this indicates that parties involved in previous cases agreed that reimbursement is impossible where the producer and importer are the same entity.

Lastly, Hylsa asserts that if the Department is inclined to reconsider its interpretation of § 353.26, it would not be proper to do so for the final results of this administrative review. Hylsa believes that applying the reimbursement regulation in cases where the producer/reseller and importer are the same entity would be a fundamental change in Departmental policy that should be completed through our normal rule-making procedures, including publication in the **Federal Register**, and provision for comment by all interested parties. The application of the reimbursement regulation to Hylsa's sales in this review would penalize Hylsa for failing to predict what Hylsa characterizes as a fundamental policy change.

*Department's Position*

We disagree with petitioners that 19 CFR § 353.26 is applicable in this case. Petitioners claim that because the Department has not collapsed entities to apply the reimbursement regulation in past cases, we have not addressed whether the regulation can apply to a single entity. Our decision as to reimbursement is based upon our regulatory interpretation of 19 CFR § 353.26, which is that two separate corporate entities must exist to invoke the reimbursement regulation. This interpretation was the basis for the decision not to apply the reimbursement regulation in the preliminary results of this administrative review. Petitioners cited to *Brass Sheet and Strip from the Netherlands* and *Final Results of Steel Products from the Netherlands,* in which the Department invoked the reimbursement regulation, and claimed that the regulation should likewise be applied here, where the exporter is the importer. However, because two separate entities were present in both of those cases, those decisions do not apply to the instant case in which one corporate entity is the producer, exporter and importer of record.

We also disagree with petitioners' claim that Hylsa International could be considered the ''importer'' to satisfy the separate corporate entity requirement. Hylsa International is a paper company with no employees or sales activities. In addition, the customs broker bills Hylsa, not Hylsa International, for fees it incurred. The customs broker also claims Hylsa, not Hylsa International, as the importer of record on the customs entry document completed upon importation of subject merchandise. Therefore, we do not agree that the subject merchandise imported into the United States by Hylsa is for Hylsa International's account. Accordingly, we conclude that, for purposes of the reimbursement provision, Hylsa is the importer as defined in 19 C.F.R. § 353.2(i) because it is ''the person by whom . . . the merchandise is imported.''

As indicated above, petitioners assert that § 353.26 applies even when the producer and importer are the same entity. Petitioners claim that the Department has applied the reimbursement regulation to cases with CEP sales without addressing concerns regarding an entity reimbursing itself and cites two antidumping cases to support this argument. As indicated above, petitioners assertions are incorrect. In *Color Television Receivers,* our premise was precisely the notion that the reimbursement regulation does not apply when the producer, exporter and importer are one and the same entity. In that case, the issue was whether companies which had been collapsed and treated as a single entity for purposes of calculating duties should also be considered a single entity for purposes of applying the reimbursement regulation. See Id. at 4411. In that case, we determined that these are distinct issues, requiring different analyses. As we stated, ''[h]ow antidumping duties are calculated and who, under the law, is responsible for paying those duties are separate and distinct issues.'' Id. at 4411. Unlike the case now before us, *Color Television Receivers* did not involve a single entity involved in the production, export and import of subject merchandise. In the cases cited by petitioners, *two* entities were involved in the production, export, and import of the subject merchandise. Because the Department has determined that a single entity is involved in the production, export, and import of subject merchandise in this administrative review, the two cited cases are inapplicable in this instance.

While we recognize that petitioners' position may be a permissible interpretation of the regulation, the Department continues to believe that our interpretation is more appropriate given the circumstances of this case.

*Comment 2: Co-export Sales*

Hylsa grants co-export rebates on sales to home market customers that use pipe as input material to manufacture non-subject merchandise for export. Hylsa explained that it provides the rebate to account for the differential between home market and export prices for subject pipe charged to these customers. Hylsa requires the majority of its co-export customers to submit export documentation as proof that they are eligible for the rebate. See Sales Verification Report at 9.

Petitioners assert that the Department should exclude these co-export sales for comparison purposes because the price at which the merchandise is sold is not ''the price at which the foreign like product is first sold . . . for consumption in the exporting country'' under 19 U.S.C. § 1677b(a)(1)(B)(i). Petitioners argue that the Department is entitled to agency deference in defining home market consumption on a case-by-case basis, citing *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837, 842–843 (1984). Because co-export rebates are granted only for sales which are subsequently exported after further processing, petitioners insist that such sales are not ''for consumption'' in Mexico, and believe that including co-export sales in the normal value calculation would encourage price discrimination of subject merchandise between Mexican and U.S. markets. Use of these sales for comparison purposes, petitioners conclude, will not provide an accurate measurement of any price differences between the two markets.

Alternatively, petitioners argue that the Department may consider co-export sales to be outside of the ordinary course of trade as defined at 19 U.S.C. § 1677(15). Petitioners list a number of factors that the Department should consider when deciding whether sales of subject merchandise are made outside of the ordinary course of trade, citing the Court of International Trade's (CIT) decision in *Laclede Steel Co.* v. *United States,* Slip Op. 95–144, 1995 Court of International Trade LEXIS 191 (Ct. Intl. Trade 1995). These factors are: 1) the price of the merchandise as compared to other home market sales, 2) the profit margin of the merchandise as compared to other home market sales, 3) the number of customers purchasing the product, 4) quality assurances extended for the merchandise, 5) differences in how the product is sold, 6) the end use of the merchandise, 7) the average size of the sale compared to other home market sales, and 8) distinguishable characteristics of the product by the seller. Petitioners state that the Department should also note other particular characteristics of Hylsa's co-export sales, including (i) only home market customers that export to the U.S.

market receive the rebate, and (ii) co-export sales are made at prices not representative of ''conditions and practices within Mexico for sales of standard pipe.'' Petitioners maintain that Hylsa's co-export sales prices are below ''normal'' home market prices, which proves that profitability is below that of normal domestic sales. Sales terms for co-export sales differ from normal home market sales in that separate export documentation and dual invoicing are required. Petitioners note that these sales are also made by Hylsa's export sales department instead of the domestic sales department, which handles all other home market sales.

Petitioners assert that even if the Department does consider these sales to be within the ordinary course of trade, in the past it has reserved the inherent authority under 19 C.F.R. § 353.44(b) to exclude home market sales from its calculation, if the Department believes that their inclusion would not serve the purpose of the antidumping law. This provision states that if 80 percent of home market sales are made at the same price, the Department will calculate normal value based on that sales price alone, excluding the remaining transactions. Petitioners also cite 19 C.F.R. § 353.44(c), which provides that, if the Department decides that § 353.44(b) does not apply and that using weighted-average price or prices (as provided for in § 353.44(a)) is inappropriate, the Department will use any other reasonable method for calculating normal value that it deems appropriate. Therefore, petitioners believe that we should disregard co-export sales in the calculation of normal value.

Petitioners assert that if the Department includes the co-export sales, it should not allow any adjustment for ''co-export rebates'' granted to home market customers. According to petitioners, the Department could not verify the basic operation of these rebates as a result of inconsistent and contradictory explanations made by Hylsa at verification. Therefore, petitioners assert that the Department should add the rebate amounts back into the invoiced home market price using a circumstance-of-sale (COS) adjustment to increase normal value by the amount equal to the co-export rebates, as provided under 19 U.S.C. § 1677b(a)(6). Petitioners cite *Zenith Electronics Corp.* v. *United States,* 77 F.3d 426 (Fed. Cir. 1996), *Mantex, Inc.* v. *United States,* 841 F. Supp. 1290 (Ct. Intl. Trade 1993), and *Sawhill Tubular Division Cyclops Corp.* v. *United States,* 666 F. Supp. 1550 (Ct. Intl. Trade 1987) to support the discretion the courts have allowed the Department regarding COS adjustments. Petitioners state that we made a COS adjustment in *Oil Country Tubular Goods from Argentina,* 60 FR 33539 (June 28, 1995) (Comment 6) to account for rebates granted on third-country comparison market sales. Petitioners note further that the CIT upheld our adjustment and finding of a ''causal link'' between the rebates and any difference ''or lack thereof'' between U.S. market prices and comparison market prices in *U.S. Steel Group* v. *United States,* 973 F. Supp. 1076 (Ct. Intl. Trade 1997). Petitioners argue that a ''causal link'' exists between Hylsa's co-export rebates and the difference in prices between the U.S. and comparison prices in the instant review.

Hylsa avers that the Department should continue to include co-export sales for comparison with U.S. sales. Hylsa maintains that the operations of the co-export rebate program were fully explained to the Department and that the confusion petitioners cite arose from one sales trace analyzed at verification. Hylsa argues that the payment process for this sale was not characteristic of co-export sales payments, and that normal invoicing procedures were followed by Hylsa. Therefore, Hylsa believes that the co-export rebate program was described correctly to the Department.

Hylsa further argues that co-export sales are made for consumption in the home market, demonstrated by the fact that the co-export customers transform the foreign like product into merchandise outside the scope of the antidumping duty order before exportation. Hylsa cites to *Dynamic Random Access Memory Semiconductors of One Megabit and Above from Korea (DRAMS from Korea),* 58 FR 15467, 15473 (March 23, 1993) in support of its position.

Additionally, Hylsa asserts that co-export sales are made within the ordinary course of trade. Hylsa notes that its co-export rebate program predates the original antidumping duty investigation and that the Department included these sales in its home market price calculations in the original investigation, published in *Circular Welded Non-Alloy Steel Pipe from Mexico (Final Determination of Pipe from Mexico),* 57 FR 42953, 42954 (September 17, 1992). Hylsa maintains that no differences exist in ''quality assurance, average size of sale, product markings, or the manner in which the pipe is sold'' between co-export sales and other home market sales. Hylsa contends that, under the Department's established practice, price differentials alone are not sufficient to classify a company's sales, with otherwise-normal distribution channels, as sales made outside the ordinary course of trade. *See Electrolytic Manganese Dioxide from Japan,* 58 FR 28551, 28552 (May 14, 1993).

Hylsa also argues against the petitioners' proposed application of a COS adjustment to co-export sales to adjust for any price differential attributable to co-export rebates. Hylsa contends that the regulation regarding COS adjustments provides for the application of a COS adjustment to account for differences in direct selling and other assumed expenses. Hylsa notes that petitioners do not address any differences in direct selling and/or assumed expenses between Hylsa's co-export and other home market sales. Hylsa also notes that any price differential between these sales exists because the co-export customer commits to using the foreign like product as input for non-subject merchandise which is subsequently exported. The Department cannot, and should not, use this commitment to apply an unfavorable COS adjustment, according to Hylsa.

*Department's Position*

We disagree with petitioners that co-export sales are not made for consumption in the home market or that these sales are outside the ordinary course of trade. Additionally, we disagree with petitioners that the Department should exclude these sales under 19 CFR § 353.44 (b) and (c) or that we should apply a COS adjustment.

Hylsa's co-export customers purchase the foreign like product to use as an input for the processing of merchandise outside the scope of the antidumping duty order. This finished merchandise is then exported to the United States or South America. We agree with Hylsa that the transformation of the foreign like product into non-subject merchandise constitutes consumption by the home market co-export customers and that such transactions constitute home market sales under section 773(a)(1)(B)(i) of the Act. We followed this practice in the past. *See, e.g., DRAMS from Korea* at 15473. Consistent with our findings in *DRAMS from Korea,* the merchandise exported by Hylsa's co-export customers is not within the class or kind of merchandise subject to the order. Morever, as in *DRAMS from Korea,* the record in this case indicates that Hylsa does not know the ultimate export destination to which the further-processed merchandise is shipped. *See Id.*

Furthermore, we do not consider Hylsa's co-export sales to be outside of

the ordinary course of trade under 19 U.S.C. § 1677(15). This provision states that ''ordinary course of trade'' means the ''conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' We note that Hylsa implemented the co-export rebate program before the antidumping petition was filed. Therefore, co-export sales have been part of Hylsa's normal business practices for many years. Additionally, we considered these sales as within the ordinary course of trade and included them in our home market price calculation in the original investigation in this case (*see Final Determination of Pipe from Mexico* at 42954). Petitioners argued that *Laclede Steel Co.* v. *United States* outlined eight factors which the Department should consider when determining whether sales were made within the ordinary course of trade. We agree with petitioners that co-export sales prices are lower than other home market sales prices and that sales terms are different for co-export sales. However, no sales differences exist with regard to quality assurance for the product, distinguishable characteristics of the pipe, average size of the sale, or the manner in which the majority of co-export sales are sold (*see* Proprietary Version of Hylsa's July 3, 1997 Response at 35). We believe that the above-cited differences between co-export and other home market sales in and of themselves are not sufficient to consider co-export sales as outside the ordinary course of trade.

Petitioners note that we have the inherent authority under 19 C.F.R. § 353.44 (b) and (c) to exclude those sales that would not serve the purposes of the antidumping statute. We note that § 353.44(b) concerns home market transactions sold at the ''same price.'' The majority of Hylsa's home market sales are made at varying price levels, thus rendering this provision inapplicable. Additionally, § 353.44(c) states that if the Department determines that § 353.44 (a) and (b) do not apply, we have the authority to ''use any other method for calculating foreign market value.'' Subparagraph (a), which states that the Department will calculate normal value by using the weighted-average price when home market sales vary in price, applies in the review. Because we consider the co-export sales to be made within the ordinary course of trade and consider such sales as home market sales, we do not need to invoke our authority to exclude these sales when calculating normal value.

Finally, we disagree with petitioners that a COS adjustment is warranted for the co-export sales. Under 19 C.F.R. § 353.56(a)(2), factors that would warrant the use of a COS adjustment involve differences in selling expenses, such as ''commissions, credit terms, guarantees, warranties, technical assistance, and servicing * * * [and] also * * * differences in selling costs.'' We did not find that Hylsa's co-export sales had any demonstrable differences in selling expenses, as referenced above. Therefore, a COS adjustment is not warranted for Hylsa's co-export sales.

*Comment 3: Additional Foreign Inland Freight, Additional Inland Freight, Additional Foreign Brokerage Fees, and Additional U.S. Brokerage Fees*

Hylsa argues that the Department improperly rejected Hylsa's reported additional foreign inland freight, additional inland freight, additional foreign brokerage fees, and additional U.S. brokerage fees and improperly applied adverse partial facts available. Hylsa explains that in its normal course of business it incurs freight and brokerage expenses which exceed the amounts billed to, and collected from, its customers. Hylsa asserts that it used a reasonable allocation basis for reporting these additional expenses, given that it does not maintain actual freight and brokerage costs on a sales-specific basis, and that transaction-specific reporting would have been too burdensome. Hylsa argues that the calculation methodology it used in this administrative review was identical to that which was verified and accepted by the Department in the original investigation of this case. Hylsa also cites to the following cases as examples where the Department allowed the allocation of movement expenses when the calculation of transaction-specific costs was deemed too burdensome: *Industrial Belts from Japan*, 58 FR 30018, 30022; *Steel Wire Rope from India*, 56 FR 46285, 46287 (September 11, 1991).

Hylsa argues that the Department verified the accuracy of the reported additional freight and brokerage expenses by reconciling the amounts reported in Hylsa's section B and C sales listings to Hylsa's cost accounting system. Additionally, Hylsa asserts that the Department verified the unreasonable burden Hylsa would have faced in attempting to report these expenses on a transaction-specific basis. Hylsa reiterated that it does not have computer capabilities to match the additional freight expenses to specific invoices.

Hylsa asserts that the Department has no reasonable basis for rejecting the reported additional freight and brokerage expenses. Hylsa notes that the Department claimed in the preliminary results of this administrative review that the information was unverifiable based on transaction-specific freight and brokerage expenses the Department calculated from individual sales traces reviewed at verification. Hylsa maintains that the allocation of these additional expenses was reasonable given that, ''on average[,] Hylsa's customers paid Hylsa less for shipping and brokerage expenses than Hylsa paid its suppliers. Due to the inherent nature of averages, however, a given customer may have paid more or less than Hylsa paid on any specific transaction.'' Hylsa's February 6 brief at 13. Hylsa contends that this fluctuation does not render the information unverifiable.

Hylsa further argues that the Department was not warranted in its use of partial adverse facts available for the additional freight and brokerage expenses in the preliminary results. Hylsa asserts that it provided verifiable information and cooperated to the best of its ability to comply with our requests for information. In addition, Hylsa maintains that the Department did not advise Hylsa in its supplemental questionnaires that its reporting methodology was incorrect. In sum, Hylsa argues that the reporting of additional freight and brokerage expenses, in addition to those charged to customers, to compensate for the difference between the actual and invoiced freight and brokerage expenses, is proper and should be used.

Petitioners assert that the Department should continue to disallow the additional inland freight and foreign inland freight expenses reported by Hylsa for the final results of this review. Petitioners argue that the methodology Hylsa employed to calculate the additional freight expenses for both home market and U.S. sales is unacceptable because it encompasses fees incurred on both subject and nonsubject merchandise allocated only to sales of subject merchandise that incurred freight expenses. Additionally, petitioners argue that additional freight charges result from partial truck load shipments, noting that ''[t]he shipping company charges by the truckload, but Hylsa invoices its customers for shipping charges based on a flat per-ton rate that assumes the truck is full.'' Petitioners' February 13 rebuttal brief at 3. Petitioners contend that Hylsa's methodology implies that it pays the

same proportion of additional freight fees for subject and non-subject merchandise sales delivered by partial truck loads. However, petitioners note that there is no evidence on the record supporting this assumption. Petitioners assert that the verification report shows that an overall calculated percentage does not reasonably represent additional freight charges for individual transactions.

Petitioners cite to the final results of the previous administrative review of this case in which the Department disallowed Hylsa's claimed adjustment for additional freight expenses. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico (Final Results of Pipe from Mexico)*, 62 FR 37014, 37017 (July 10, 1997) (Comment 5). Petitioners note that although the methodology Hylsa used to report the additional expenses in the above-cited review was different than in this review, it was flawed for similar reasons that are apparent in the present review; specifically, it resulted in the improper allocation of freight and brokerage expenses incurred on sales of non-subject merchandise to sales of subject merchandise. Additionally, the Department found in the previous review that Hylsa maintained records that would have allowed it to tie freight expenses to specific sales but that Hylsa destroyed these records after a short period of time. In response, the Department stated in the final results that it intended to investigate this situation in future reviews. Petitioners argue that Hylsa should have been prepared in this present review to substantiate its freight claim by maintaining the appropriate records.

Petitioners argue that the Department should also continue to deny any adjustment for the additional foreign and U.S. brokerage expenses. Petitioners contend that because the calculations represent brokerage expenses incurred on subject and nonsubject merchandise exported to both U.S. and third-country markets, it is not a reasonable representation of additional brokerage fees incurred on U.S. sales of subject merchandise. Petitioners cite to the Memorandum to the File from Ilissa Kabak, December 4, 1997 (Analysis Memo) at 2 and the Sales Verification Report, November 20, 1997, at 33.

*Department's Position*

We disagree with Hylsa's claim that we improperly rejected the reported additional foreign inland freight, additional inland freight, additional foreign brokerage fees, and additional U.S. brokerage fees. We also disagree with Hylsa's claim that we improperly applied adverse partial facts available.

Hylsa's methodology for allocating additional freight and brokerage expenses to reported home market and U.S. sales is unacceptable. In its original and supplemental questionnaire responses, Hylsa never explicitly indicated that its additional freight calculations included expenses incurred on non-subject as well as subject merchandise. Hylsa's February 21, 1997 Section B response at 27 and July 3, 1997 response at 70. Thus, Hylsa's complaint that we did not alert Hylsa that the reporting methodology was incorrect in supplemental questionnaires is not compelling. Because Hylsa inadequately explained its calculation methodology before verification, it was not possible for us to advise Hylsa that its methodology was incorrect. We agree with petitioners that, because these additional expenses for sales of subject and non-subject merchandise are allocated only to sales of subject merchandise that incurred freight expenses, the calculation methodology for this expense is unacceptable. As for the additional foreign and U.S. brokerage expenses, Hylsa again did not explicitly state in its responses prior to verification that its calculations for these expenses included fees incurred for both subject and non-subject merchandise sales to both U.S. and third-country markets. Hylsa's July 3, 1997 Section C response at 88. Therefore, we agree with petitioners that because these additional expenses for subject and non-subject merchandise, and for export markets other than the United States, are allocated only to subject merchandise sales to the U.S. market, the calculation methodology is distortive and, therefore, unacceptable.

We also disagree with Hylsa that the information regarding the additional freight and brokerage expenses was verified and should not be rejected. When comparing the total reported freight and brokerage expenses with actual costs incurred for the sales traces we analyzed at verification, we determined that the total freight and brokerage fees, including the additional expenses reported, did not reasonably represent the actual costs incurred by Hylsa and, therefore, could not be considered verified. Accordingly, we adjusted the expenses in our margin calculation as explained in the Analysis Memo at 2–3.

It is the respondent's burden to provide the Department with verifiable information in antidumping proceedings. *See* 19 CFR 353.37 and 353.54. As we noted in the final results of the previous administrative review, Hylsa maintains computerized records that would allow it to tie total freight expenses to specific transactions but destroys these records after a short period of time in the normal course of business. Therefore, if these records exist in Hylsa's accounting system, we expect Hylsa's full cooperation in providing us with verifiable information, which would include these records, to tie freight charges to specific transactions. Therefore, we believe that Hylsa did not cooperate to the best of its ability and that the use of partial adverse facts available is justified. As we explained in our preliminary results, we have applied partial facts available in accordance with section 776 of the Act. See Preliminary Results, 62 FR 64564 at 64565.

In sum, the use of partial adverse facts available for additional freight and foreign and U.S. brokerage charges on U.S. sales and the denial of additional freight deductions on home market sales is justified and we continue to follow this approach in these final results of review.

*Comment 4: U.S. Credit Expenses*

Petitioners argue that the Department should base U.S. credit expenses on facts available. Petitioners note that in its questionnaire response, Hylsa explained that credit expenses were calculated on a sale-by-sale basis using the actual number of days between the shipment and payment dates, citing Hylsa's February 21, 1997 Section C questionnaire response at 31–32. Subsequently, petitioners note that at verification the Department found that actual payment dates were not used for Hylsa's credit calculation, noting the findings presented in the Sales Verification Report at 18–20. Therefore, petitioners argue that the Department should use the longest reported shipment-to-payment date interval to calculate U.S. credit expenses.

Hylsa disagrees with petitioners' request for the Department to apply facts available to U.S. credit expenses. Hylsa contends that the reported sale-specific payment dates were the dates on which the payments for U.S. sales were posted in Hylsa's accounting system in the normal course of business. Hylsa supported its position by reiterating that when a U.S. customer specifies invoices for which it is paying, Hylsa's accounting system records the actual date of payment. However, if the U.S. customer does not specify invoices with its payment, Hylsa makes a ''reasonable assignment'' of the payment to outstanding invoices in Hylsa International's customer account with Hylsa, retiring the oldest outstanding

balance first. Hylsa's February 13 rebuttal brief at 18. Hylsa's accounting records reflect a longer outstanding balance than is actually the case for these sales. Therefore, Hylsa asserts, the reported payment dates tend to over-state U.S. credit expenses due to the lag time between the receipt of payment and recording of payment for these sales in the accounting system, thereby rendering the application of facts available unnecessary.

*Department's Position*

We agree with Hylsa that applying facts available for U.S. credit expenses is unreasonable. While it is correct that Hylsa did not use the actual payment date for certain sales, we noted from the verified sales traces that Hylsa reported payment date as the date on which the payment was recorded in its accounting records in the normal course of business. We agree with Hylsa that the reported payment dates tend to over-state U.S. credit expenses due to the lag time between the actual receipt of payment and its subsequent recording in the accounting system. Because Hylsa's methodology would tend to over-state, rather than understate, U.S. credit expenses, the application of facts available is not justified in this instance.

*Comment 5: Inland Freight Expenses for 1996 Co-Export Sales*

Hylsa asserts that we improperly disallowed deductions for inland freight expenses incurred on co-export sales made in 1996. Hylsa claimed that although Department verifiers noted in the verification report that no freight charges were incurred on co-export sales made during 1996, this conclusion is incorrect due to a misunderstanding by the Department. Hylsa argues that no company official claimed during verification that the co-export sales made in 1996 did not incur freight expenses. To support this, Hylsa filed with its February 6 case brief an affidavit from the company official responsible for presenting freight information during verification. The affidavit states that this company official explained to Department verifiers that freight expenses for 1996 co-export sales were recorded in Hylsa's *export* freight expense account. Hylsa also argues that in its submissions, Hylsa claimed freight expenses for these sales and that during verification the Department confirmed that the sales in question incurred freight charges. Therefore, Hylsa contends that the Department should not disallow the freight expenses reported for 1996 co-export sales.

Petitioners argue that if the Department uses co-export sales for comparison for the final results of this administrative review (*see* Comment 2 above), we should continue to disallow the deduction of freight expenses for 1996 co-export sales. Petitioners contend that the discrepancies the Department discovered between the questionnaire response and information presented at verification justify denying the adjustment. Additionally, petitioners argue that the affidavit submitted by Hylsa with its case brief was untimely filed because the deadline for submitting factual information to the Department was June 16, 1997, 180 days after the publication date of the notice of initiation, as outlined in § 353.31(a)(1)(ii) of the Department's regulations. Petitioners believe that this affidavit should not be considered for the final results of this review nor retained for the record, as allowed under § 353.31(a)(3). Petitioners note that even if the Department retains the affidavit, the document should not negate the statement, noted by the Department in its sales verification report, that Hylsa did not incur freight expenses on 1996 co-export sales.

*Department's Position*

We disagree with Hylsa that we improperly disallowed deductions for inland freight expenses incurred on co-export sales made in 1996. During verification, Hylsa presented the Department with worksheets regarding freight expenses that were incurred throughout the POR. We noted that the co-export freight accounts had zero recorded for each month of 1996. Prior to submission of its case brief, Hylsa never provided the Department with an explanation that freight charges for its home market co-export sales were expensed in the export freight account.

Further, the record does not contain evidence concerning i) how much freight was incurred on co-export sales in 1996, and ii) where, and how, such charges were expensed in Hylsa's accounting records. Although Hylsa submitted an affidavit with its February 6 case brief (at Appendix 1) from the official in charge of presenting freight expenses to the Department at verification, by the affiant's own statement, he ''did not include[ ]'' data on 1996 co-export freight expenses in the worksheets presented specifically for purposes of verifying domestic inland freight. Therefore, Hylsa itself made any such expenses unverifiable by withholding the information that would substantiate the claimed adjustment. Therefore, we are denying Hylsa's claimed adjustment for freight expenses incurred on 1996 co-export sales.

*Comment 6: Simultaneous Reporting of Early Payment Discounts and Reported Interest Revenue*

Hylsa argues that the Department improperly disallowed early payment discounts for observations where Hylsa reported both early payment discounts and interest revenue collected on late payments. According to Hylsa, the company's accounting records permitted it to report only a customer-specific allocated amount of early payment discounts granted and late payment fees/interest revenues collected during the POR. Hylsa notes that the Department accepted the customer-specific allocation methodology for these adjustments. Hylsa argues against the Department's preliminary decision that the allocation of both an early payment discount and interest revenue fee to the same transaction is inconsistent. Hylsa maintains that this allocation reflects that the customer in question remitted payment early for some purchases and late for others, not that the customer earned early payment discounts and paid late-payment charges *on the same sales transaction*. Hylsa believes that because this approach accurately reflects the discounts granted and income Hylsa received from these customers, the Department should not deny deductions of early payment discounts for those sales that also have a reported interest revenue.

Petitioners maintain that the Department should continue to disallow any deduction for early payment discounts for those transactions with simultaneously reported interest revenue. Petitioners note it is impossible for any given customer, *on average*, to pay both early and late. Therefore, argue petitioners, the Department was correct in denying the adjustment for these transactions.

*Department's Position*

Prior to verification, Hylsa neglected to explain that early payment discounts reported for sales made in 1996 were reported on an allocated, not actual, basis. *See* Hylsa's February 21, 1997 response at 19 and July 3, 1997 response at 64. Although specifically asked to explain how the reported per-unit early payment amount was calculated, Hylsa never suggested that the reported early payment discounts were calculated, allocated amounts. In its February 21 response Hylsa stated that ''[t]he amount of the prompt-payment discount granted for each sale is reported on a per-metric-ton basis. . .''. We note that

for other adjustments reported on an allocated basis, Hylsa fully explained in its questionnaire response that the expenses were indeed allocated amounts, not transaction-specific amounts (*e.g.*, interest revenue, inventory carrying costs). *See id.* at 33, 38. Therefore, prior to verification, Hylsa did not fully and accurately disclose the methodology it used to report early payment discounts for sales made in 1996 prior to verification.

At verification Hylsa explained that it implemented a new accounting system in 1996. Hylsa stated that with this new accounting system, it lost the ability to tie early payment discounts and the accompanying credit memos to specific invoices issued throughout 1996. *See* Sales Verification Report at 23. Hylsa then explained that, for early payment discounts granted in 1996, it calculated a customer-specific percentage of early payment discounts granted on sales of subject and non-subject merchandise for the calendar year 1996. Hylsa then applied these customer-specific percentages to reported home-market sales. *See* Sales Verification Report at 24 and Verification Exhibit 17.

In response to comments submitted in the case and rebuttal briefs, we further analyzed Hylsa's questionnaire responses and verification exhibits. We have concluded from information on the record that Hylsa did indeed have the ability to report transaction-specific early payment discounts. Included in documentation submitted by Hylsa at Appendix SA–11 are examples of sales invoices issued in 1996 with accompanying credit memos for early payment discounts. The credit memo includes the invoice number for which the early payment discount was granted. Additionally, page 21 of Verification Exhibit 21 shows the customer account detail for a home market customer. We found that this customer account subledger reflects debit and credit movement, by sales invoice, of the account. Additionally, we found that early payment discounts are recorded, *by invoice,* in the same customer account subledger. Therefore, we conclude that Hylsa had the ability to tie early payment discounts to specific sales invoices, contrary to its claims at verification. Furthermore, Hylsa specifically stated that it was *unable* to report transaction-specific early payment discount amounts, not that sales-specific reporting would be too burdensome. We find that Hylsa did not act to the best of its ability in responding to our requests for information. Hylsa failed to provide accurate and verifiable information regarding early payment discounts granted in 1996. Therefore, for the final results, we are denying the deduction of all early payment discounts granted in 1996; we are continuing to allow deduction of early payment discounts for sales made in 1995, which were reported on a transaction-specific basis.

*Comment 7: Bare and Varnished Pipe*

Hylsa argues that the Department improperly instructed it to treat bare and varnished pipe as having the same surface finish when assigning control numbers (CONNUMs). In its original questionnaire responses, Hylsa reported bare and varnished pipe as products with separate surface finishes. Prior to verification the Department instructed Hylsa to consider bare and varnished pipe as the same products when assigning CONNUMs and subsequently treated these products as identical merchandise for the preliminary margin calculation. Hylsa asserts that bare and varnished pipe are not identical products because of material and production process differences, and that bare and varnished pipe are recognized in the marketplace as discrete products, with differing prices and applications.

Hylsa cites *Gray Portland Cement and Clinker from Mexico,* 55 FR 29244, 29247 (July 18, 1990) in which the Department emphasized that § 771(16)(A) of the Act states a preference for matching home market merchandise with identical characteristics to those products sold in the U.S. market. Hylsa argues that bare and varnished pipe are not physically identical merchandise and, therefore, the Department should follow statutory preference and match identical products. Because Hylsa sold varnished pipe in Mexico identical to merchandise sold in the United States, Hylsa argues, the Department should not match home market sales of bare pipe to U.S. sales of varnished pipe.

Hylsa further asserts that market behavior demonstrates that bare and varnished pipe are different products that are not easily interchangeable. For example, customers who galvanize pipe themselves prefer bare pipe so that they will not have to remove the varnish prior to galvanization. Additionally, Hylsa contends that price differentials between the two products can be significant and cites a proprietary example from its database of transactions reported for January 1996.

According to Hylsa, bare and varnished pipe go through different finishing stages during the production process. While varnished pipe is coated with a lacquer varnish, bare pipe may be pickled, oiled, or left untreated. Due to these differences, Hylsa argues, end products incur different costs of production.

Petitioners respond that the Department has always treated bare and varnished pipe as the same product for model-matching purposes in its pipe and tube cases. Because varnishing is viewed by the industry primarily as a packing treatment to inhibit rust, petitioners aver, its presence does not transform the merchandise into a different product. Petitioners claim that Hylsa's example of a price differential is unreliable. They note it is based on a comparison of one January 1996 sale of bare pipe, which was sold to a customer not even included in Hylsa's list of standard pipe customers, to three, weighted-average January 1996 sales of varnished pipe. Furthermore, argue petitioners, the inclusion of co-export sales and unreliable adjustments reported in the sales database cause substantial price differences between identical products sold within the same month. According to petitioners, these price differences operate independently of the pipe's surface finish. Lastly, petitioners state that one selective example of a price differential between bare and varnished pipe does not rise to the level of a prima facie demonstration of price differentials attributable to differing surface finish.

*Department's Position*

We agree with petitioners. Pickling, oiling and varnishing are packing treatments used to inhibit rust development on finished pipe products. The application of these treatments does not transform the finished merchandise into a different product for purposes of merchandise comparison under § 771(16)(A) and (B) of the Act. We are unable to determine from the record the significance of Hylsa's example of the price differential between bare and varnished pipe because one example of a price differential is not representative of a trend of price differentials. We have treated bare and varnished pipe as identical merchandise in previous reviews of this and other pipe cases and we continue to do so for the final results of this review.

*Comment 8: Value-Added Tax Included in the Home Market Credit Expense Calculation*

The Department explained its decision to exclude value-added taxes (IVA) from the home market credit expense calculation in the previous review of this case. *See Final Results of Pipe from Mexico* at 37016. In this review we determined that because the IVA is revenue for the government and not for Hylsa, it should not be included

in the credit calculation. Because of the Department's decision in the previous review, Hylsa reported home market credit expenses for this review exclusive of IVA. Hylsa claims, however, that we should include IVA when calculating home market credit expenses for these final results, as we accepted this methodology in the less-than-fair-value (LTFV) investigation of this case.

Hylsa claims that it allows its customers to delay payment of the entire invoice amount of a sale, which includes the IVA. Therefore, the opportunity cost to Hylsa of extending credit should be based on the entire amount of the invoice. Hylsa cites to *Certain Fresh Cut Flowers from Mexico,* 56 FR 1794,1798 (January 17, 1991) and *Shop Towels from Bangladesh,* 57 FR 3996, 4001 (February 3, 1992) as cases where the Department's approach to credit expenses supports Hylsa's argument. Hylsa argues that the fact that IVA is a revenue for the government, not the company, is irrelevant because the customer carries credit based on the entire amount of the invoice, and it is based on this amount that Hylsa incurs the opportunity cost of capital.

Petitioners object to Hylsa's suggestion that the Department include IVA in the home market credit expense calculation. They note that Hylsa is presenting the same argument that the Department rejected in the previous administrative review in *Final Results of Pipe from Mexico* at 37016. Petitioners argue that although the opportunity cost of the money used to pay taxes may be as genuine as other opportunity costs, they represent an incident of taxation, inclusion of which does not serve any purpose under the antidumping statute.

*Department's Position*

We disagree with Hylsa that IVA should be included in the home market credit expense calculation because the IVA is not a revenue for Hylsa but for the government. As the Department explained in *Certain Cut-to-Length Steel Plate from Brazil,* 62 FR 18486 at 18488 (April 15, 1997), it is not our practice to include VAT payments in credit expense calculations. In that case we stated that ''[w]hile there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons.'' *Id.* at 1848. The Department continued to explain that ''to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in the respondents' home market and U.S. databases.'' *Id.* at 18488. Furthermore, no statute or regulation requires us to include IVA in the home market credit expense calculation. For these final results, we are following our established practice of excluding the IVA from home market credit expense calculations in the final results of this review.

*Comment 9: General and Administrative Expenses*

Hylsa objects to the Department's recalculation of Hylsa's general and administrative expenses (G&A) in the preliminary results of this administrative review and believes that the Department should use Hylsa's reported G&A rates. *See* Analysis Memo at 9, Appendix 2. Hylsa argues that in other cases the Department has accepted its methodology which involves a ''layered calculation'' in which ''corporate-wide G&A expenses are allocated over corporate-wide cost of goods sold, and divisional G&A expenses are allocated over divisional costs of goods sold.'' Hylsa cites *Flat Panel Displays from Japan,* 56 FR 32376, 32398–99 (July 16, 1991) as support for its reporting methodology. Hylsa believes that its reported ''layered'' G&A expenses are consistent with the methodology the Department has routinely accepted. Further, Hylsa claims the Department's methodology in the instant review is illogical because Hylsa's total G&A expenses include costs for divisions that are not related to the production or sale of subject merchandise. Hylsa argues in the alternative that if the Department does not accept its methodology for reporting G&A expenses, the information the Department would need to recalculate G&A on a company-wide basis is on the record. Therefore, argues Hylsa, the Department should not apply adverse facts available as requested by the petitioners.

Petitioners note that the Department decided in the previous administrative review of this case to use company-wide G&A rates for the G&A calculation in *Final Results of Pipe from Mexico* at 37022. Petitioners assert that although the Department has determined that G&A must be reported on a company-wide basis, Hylsa has deliberately refused to comply with the Department's request in this review. In light of Hylsa's deliberate refusal in this regard, petitioners assert that the Department should apply adverse facts available using Hylsa's, or any related entity's, highest G&A rate on the record.

*Department's Position*

We disagree with both Hylsa and petitioners, in part. In the original questionnaire issued to Hylsa on December 23, 1996, page D–16 states that ''G&A expenses are those period expenses which relate to the activities of the company as a whole rather than to the production process alone * * * [y]ou should also include in your reported G&A expenses an amount for administrative services performed on your company's behalf by its parent company or other affiliated party.'' It is our practice to use company-wide G&A expenses when calculating cost of production and constructed value. *See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa,* 60 FR 22550, 22556 (1995).

However, we disagree with petitioners' contention that we should use adverse facts available for G&A expenses. We obtained the information to calculate acceptable G&A rates at verification. Therefore, it is unnecessary and unreasonable to apply adverse facts available given the circumstances in this review. For these final results of review we have continued to use the G&A rates that we used for the preliminary results.

*Comment 10: Additional Depreciation*

Petitioners claim that in its margin calculation program, the Department neglected to include the additional depreciation due to revaluation of fixed assets for the Flat Products Division. According to petitioners, this information was discovered at verification and is on the record.

Hylsa argues that these depreciation costs were already included in the preliminary results margin calculation program, citing to the Analysis Memo at 8.

*Department's Position*

We agree with Hylsa that these costs were included in the preliminary results margin calculation program. *See* Analysis Memo at 8 and Appendix 1. Therefore, we have continued to include these additional depreciation costs for these final results.

*Comment 11: Classification of Aluminum, Zinc, and Zinc Chloride*

Petitioners assert that the cost verification report implies that aluminum, zinc, and zinc chloride have been inappropriately classified as overhead and not direct materials. *See* Cost Verification Report at 27. Petitioners note that because these are

material inputs, they should be reclassified as direct materials costs.

Hylsa asserts that the materials in question were correctly included in the reported direct material costs and cites to the Cost Verification Report at 22.

*Department's Position*

We agree with Hylsa. After further analysis we determined that aluminum, zinc, and zinc chloride were properly classified as direct materials for the purposes of this review. Therefore, no adjustment to Hylsa's reported material costs is needed for the final results.

*Comment 12: Indirect Selling Expenses in the Arm's-Length Test*

Petitioners note that the computer program used to determine whether Hylsa's home market sales to affiliated parties were at arm's length for the preliminary results of this administrative review unintentionally neglected to subtract indirect selling expenses from the gross unit prices prior to testing the affiliated-party prices.

*Department's Position*

It is the Department's practice not to adjust for indirect selling expenses for home market sales in the arm's-length test and margin calculation programs when the reviewed U.S. transactions are EP sales. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067 (December 31, 1996). Therefore, we are not adjusting our methodology for the final results of this administrative review.

*Comment 13: Reported Customer Codes*

Petitioners argue that Hylsa's reported customer codes are reported in a non-numeric and inconsistent format. Petitioners assert that this inconsistency may result in one customer being treated as two separate entities in the arm's-length test if it has two customer codes. Because the arm's-length program does not include special instructions to correct for this error, reason petitioners, the Department should insert the proper language.

*Department's Position*

We noted the inconsistent format in which Hylsa reported customer codes for the preliminary results of this review. We inserted special computer language to correct for the inconsistencies that the petitioners noted for affiliated-customer codes in the arm's-length test for the preliminary results. Since the arm's-length test compares the weighted-average prices of affiliated party sales, by customer code and CONNUM, to the weight-averaged prices of unaffiliated party sales by CONNUM only, there is no need to insert code to ''correct'' for the home market customer codes. Therefore, for these final results, we have not inserted additional programming language related to this issue.

**Final Results of the Review**

As a result of this review, we determine that the following weighted-average dumping margin exists:

CIRCULAR WELDED NON-ALLOY STEEL PIPES AND TUBES

| Producer/manufacturer/exporter | Weighted-average margin |
|---|---|
| Hylsa | 8.31 |

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because Hylsa was the only importer during the POR, we have calculated the importer-specific per-unit duty assessment rate for the merchandise imported by Hylsa by dividing the total amount of antidumping duties calculated during the POR by the total quantity entered during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of circular welded non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by § 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 32.62 percent.[1] *See Notice of Antidumping 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 Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 353.34(d)(1) of the Department's regulations. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98–16108 Filed 6–16–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] The preliminary results of this administrative review incorrectly stated that the ''all others'' rate was 36.62 percent. *Preliminary Results* at 62 FR 64568.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North Carolina State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

*Docket Number*: 98–020. *Applicant*: North Carolina State University,