

Dated: October 21, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-964, A-201-838)

#### Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations

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

**EFFECTIVE DATE:** October 27, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Maisha Cryor at (202) 482-5831 or Zhulietta Willbrand at (202) 482-3147 (the People's Republic of China (the "PRC")), AD/CVD Operations, Office 4; George McMahon at (202) 482-1167 or James Terpstra at (202) 482-3965 (Mexico), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### The Petitions

On September 30, 2009, the Department of Commerce (the "Department") received petitions concerning imports of seamless refined copper pipe and tube ("copper pipe and tube") from the PRC and Mexico filed in proper form by Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"). See Petitions for the Imposition of Antidumping Duties on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico, dated September 30, 2009 (the "Petitions"). On October 5, 2009, October 8, 2009, October 14, 2009, and October 16, 2009, the Department issued a request for additional information and clarification of certain areas of the Petitions. On October 14, 2009, the Department contacted Petitioners by telephone seeking additional information and clarification regarding the PRC portion of the Petition. See Memo to the File from Maisha Cryor, "Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Margin Calculation,"

dated October 15, 2009. On October 16, 2009, the Department contacted Petitioners by telephone seeking additional information and clarification regarding the scope of the Petition. See Memo to the File from Dana M. Griffies, Import Policy Analyst, "Petition for the Imposition of Antidumping Duties Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Suggested Scope Changes," dated October 16, 2009.

On October 19, 2009, the Department contacted Petitioners by telephone seeking additional information and clarification regarding industry support. See Memo to the File from Dana M. Griffies, Import Policy Analyst, "Petition for the Imposition of Antidumping Duties Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Industry Support," dated October 19, 2009. Based on the Department's requests, Petitioners filed additional information on October 13, 2009 (hereinafter, "Supplement to the Petitions, dated October 13, 2009"), October 15, 2009 (hereinafter, "Supplement to the PRC Petition, dated October 15, 2009"), October 16, 2009 (hereinafter, "Second Supplement to the Petitions, dated October 16, 2009"), October 19, 2009 (hereinafter, "Third Supplement to the Petitions<sup>1</sup>,"), and October 20, 2009 (hereinafter, "Fourth Supplement to the Petitions"). The period of investigation ("POI") for the PRC is January 1, 2009, through June 30, 2009. The POI for Mexico is July 1, 2008, through June 30, 2009. See 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the "Act"), Petitioners allege that imports of copper pipe and tube from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigations that Petitioners are

requesting that the Department initiate (see "Determination of Industry Support for the Petitions" section below).

#### Scope of Investigations

The products covered by these investigations are copper pipe and tube from the PRC and Mexico. For a full description of the scope of the investigations, please see the "Scope of the Investigations," in Appendix I of this notice.

#### Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by November 9, 2009, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

#### Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of copper pipe and tube to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as 1) general product characteristics and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base

<sup>1</sup> Final amendments regarding the Petition for the Imposition of Antidumping Duties: Seamless Refined Copper Pipe and Tube from the People's Republic of China, and the Petition for the Imposition of Antidumping Duties: Seamless Refined Copper Pipe and Tube from Mexico, were filed on October 19, 2009 (collectively, "Third Supplement to the Petitions, dated October 19, 2009").

product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe copper pipe and tube, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by November 9, 2009. Additionally, rebuttal comments must be received by November 16, 2009.

#### **Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both

the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int’l Trade 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that copper pipe and tube constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Copper Pipe and Tube from the PRC (“PRC Initiation Checklist”) at Attachment II, and Antidumping Duty Investigation Initiation Checklist: Copper Pipe and Tube from Mexico (“Mexico Initiation Checklist”) at Attachment II, dated concurrently with this notice and on file in the Central Records Unit (“CRU”), Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in Appendix I of this notice. To establish industry support, Petitioners provided their own 2008 shipments of the domestic like product, and compared this to the estimated total shipments of the domestic like product for the entire

domestic industry. See Petitions, at 2–9, and Exhibits 1–7, Supplement to the Petitions, dated October 13, 2009, at 8–10, and Exhibit G, Second Supplement to the Petitions, dated October 16, 2009, at 2–3, and Exhibit 54, and Fourth Supplement to the Petitions, dated October 20, 2009, at 7–8 and Exhibit 59. Petitioners argue that shipments are a reasonable proxy for production because most domestic production is sold on the merchant market. See Petitions, at 8 and Exhibits 4–7. Petitioners estimated total 2008 shipments of the domestic like product based on two industry-specific reports that publish shipment and production information, as well as two individuals who are knowledgeable of the U.S. industry. See Petitions, at 8 and Exhibits 2–3, Supplement to the Petitions, dated October 13, 2009, at 8–10 and Exhibit G, and Second Supplement to the Petitions, dated October 16, 2009, at 2–3 and Exhibit 54, and Fourth Supplement to the Petitions, dated October 20, 2009, at 7–8 and Exhibit 59; see also PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II.

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 732(c)(4)(D) of the Act; see also PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product. See PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the

domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigations that they are requesting the Department initiate. *See id.*

#### **Allegations and Evidence of Material Injury and Causation**

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (“NV”). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry’s injured condition is illustrated by reduced market share, lost sales and revenues, reduced production, reduced capacity utilization rate, underselling and price depression and suppression, reduced workforce, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* PRC Initiation Checklist at Attachment III and Mexico Initiation Checklist at Attachment III.

#### **Allegations of Sales at Less Than Fair Value**

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations of imports of copper pipe and tube from the PRC and Mexico. The sources of data for the deductions and adjustments relating to the U.S. price, the factors of production (for the PRC) and cost of production (“COP”) (for Mexico) are also discussed in the country-specific initiation checklists. *See* PRC Initiation Checklist at 6–10 and Mexico Initiation Checklist at 6–10.

#### **Export Price**

##### **The PRC**

For the PRC, Petitioners calculated export price (“EP”) based on a price quote made during the POI for a copper pipe and tube product by a Chinese producer, sale term delivered. *See* PRC

Initiation Checklist at 6; *see also* Petitions, at 28–29, and Exhibit 20, and Supplement to the Petitions, dated October 13, 2009, at 12, and Exhibit G. Petitioners substantiated the U.S. price quote with an affidavit. *See* Petitions, at Exhibit 20. Petitioners made adjustments to EP for ocean freight, foreign inland freight, and a distributor commission. *See* PRC Initiation Checklist at 6–7; *see also* Petitions, at Exhibits 21 and 23, and Supplement to the Petitions, dated October 13, 2009, at 18–20, and Exhibit L. Petitioners made no other adjustments. *See* PRC Initiation Checklist for additional details.

##### **Mexico**

For Mexico, Petitioners based U.S. price on the invoice from an actual sale of Type K and Type L copper pipe and tube, produced by a Mexican manufacturer and sold to a U.S. customer in January 2009. *See* Mexico Initiation Checklist; *see also* Petitions, at 31 and Exhibit 20, and Supplement to the Petitions, dated October 13, 2009, at 21 and Exhibit N. Petitioners substantiated the U.S. prices used with an affidavit and a declaration from persons who obtained the information. *See* Supplement to the Petitions, at 21 and Exhibit N. Petitioners conservatively assumed the selling expenses to be zero in their calculation of the net U.S. price. Petitioners deducted ocean freight and foreign inland freight expenses but made no other adjustments. *See* Mexico Initiation Checklist at 7; *see also* Petition, at 32 and Exhibit 35, and Supplement to the Petitions, dated October 13, 2009, at 22, and Exhibit P. *See* the Mexico Initiation Checklist for additional details.

##### **Normal Value**

##### **The PRC**

Petitioners state that the PRC is a non-market economy (“NME”) country and no determination to the contrary has been made by the Department. *See* Petitions, at 29; *see also* *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009); *see also* *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Antidumping Duty Order*, 74 FR 38395 (August 3, 2009).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the

Department and, therefore, remains in effect for purposes of the initiation of the PRC investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC’s NME status and the granting of separate rates to individual exporters.

Citing section 773(c)(4) of the Act, Petitioners contend that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC; and 2) it is a significant producer of copper pipe and tube. *See* Petitions, at 29–30, and Exhibits 26 and 27. Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate-country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners calculated the NV and dumping margins for the U.S. price, discussed above, using the Department’s NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on their own consumption rates for producing copper pipe and tube in 2009. *See* Petitions at 30, and Exhibits 28 and 34. In calculating NV, Petitioners based the quantity of each of the inputs used to manufacture and pack copper pipe and tube in the PRC based on their own production experience during the POI because they stated that the actual usage rates of the foreign manufacturers of copper pipe and tube were not reasonably available. *See* Petitions, at 30. However, Petitioners also stated that their production process and cost structure is representative of the PRC copper pipe and tube producers because the act of converting copper raw material into copper pipe and tube is “fundamentally the same for all producers.” *See* Supplement to the Petitions, dated October 13, 2009, at 18. Petitioners note that several methods to perform such a conversion exist in the marketplace indicating that no one method is superior to another for the production of copper pipe and tube. *Id.*

Given these facts, Petitioners assert that their experience “should be representative of other Chinese producers when allowance is made for different wage rates and energy costs.” *Id.*

Petitioners valued the factors of production based on reasonably available, public surrogate—country data, including Indian import statistics from the World Trade Atlas. *See* Petitions, at 30, and Exhibit 29. Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries, imports from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non—industry-specific export subsidies, and imports labeled as being from “unspecified countries.” *See* Petitions, at Exhibit 29. In addition, Petitioners made currency conversions, where necessary, based on the POI—average rupee/U.S. dollar exchange rate, as reported on the Department’s website. *See* Petitions, at 31, and Exhibit 25. Petitioners determined labor costs using the labor consumption, in hours, derived from their own experience. *See* Petitions, at Exhibits 28 and 34. Petitioners valued labor costs using the Department’s NME Wage Rate for the PRC at <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>. *See* Petitions, at Exhibits 28 and 30. For purposes of initiation, the Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

Petitioners determined electricity costs using the electricity consumption, in kilowatt hours, derived from their own experience. *See* Petitions, at Exhibits 28 and 34. Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. *See* Petitions, at Exhibit 24 and, Supplement to the Petitions, dated October 13, 2009, at 17, and Exhibits I and J.

Petitioners determined natural gas costs using the natural gas consumption derived from their own experience. *See* Petitions, at Exhibits 28 and 34, and Supplement to the Petitions, dated October 13, 2009, at 17. Petitioners valued natural gas using the Indian rate reported by the Gas Authority of India, Ltd. *See* Petitions, at Exhibit 31.

Petitioners determined water costs using the water consumption derived from their own experience. *See* Petitions, at Exhibits 28 and 34. Petitioners valued water based on

information from the Maharashtra Industrial Development Corporation, which is contemporaneous with the POI. *See* Petitions, at Exhibit 24.

Petitioners based factory overhead, selling, general and administrative (“SG&A”), and profit on data from Multimetals Limited (“Multimetals”), a copper pipe and tube producer, for the fiscal year April 2008 through March 2009. *See* Petitions, at 31, and Exhibits 32 and 33, and Supplement to the Petitions, dated October 13, 2009, at 17, and Exhibit K. Petitioners state that Multimetals was an Indian producer of copper pipe and tube products during the fiscal year 2008–2009. *See* Petitions, at 31, and Exhibits 32 and 33, and Supplement to the Petition, dated October 13, 2009, at 17 and Exhibit K. Therefore, for purposes of the initiation, the Department finds Petitioners’ use of Multimetals’ financial ratios appropriate.

#### Mexico

Petitioners calculated NV for copper pipe and tube based on a price quote for a Type L copper tube offer from March 2009. *See* Petitions, at 32, and Supplement to the Petitions, dated October 13, 2009, at 24; *see also* Mexico Initiation Checklist. Petitioners substantiated the home market price quote with an affidavit and a declaration from persons who obtained the information. *See* Petitions, at 32, and Exhibit 20, and Supplement to the Petitions, dated October 13, 2009, at Exhibit N; *see also* Mexico Initiation Checklist.

#### Sales—Below-Cost Allegation

Petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of copper pipe and tube in the Mexican market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales—below-cost investigation. The Statement of Administrative Action (“SAA”), submitted to Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA, at 833, states that “Commerce will consider allegations of below—cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country—wide basis for purposes of initiating an antidumping investigation.”

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have “reasonable grounds to believe or suspect” that below—cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below—cost prices. *Id.*

#### Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (“COM”); SG&A expenses; financial expenses; and packing expenses. Petitioners calculated the quantity of each of the material inputs into COM based on the production experience of a U.S. producer of copper pipe and tube during the POI, multiplied by the value of inputs used to manufacture copper pipe and tube in Mexico using publicly available data. *See* Mexico Initiation Checklist at 8–9; *see also* Second Supplement to the Petitions, dated October 16, 2009, at 3–4 and Exhibits 55 and 56.<sup>2</sup> Petitioners calculated labor, energy, overhead and packing costs based on their own experience adjusted for known differences between costs in the United States and costs in Mexico. *Id.* To calculate the SG&A and financial expense rates, Petitioners relied on the fiscal year 2008 financial statements of a Mexican producer of welded steel pipe, products in the same general category of merchandise as copper pipe and tube. *Id.* at 8. Petitioners indicated that they calculated surrogate financial ratios using the financial statements of the most comparable company in Mexico during the most recent period for which data were available. *See* Petitions at 33, footnote 35. Specifically, Petitioners stated that the data sourced from this Mexican producer’s financial statements was the best available surrogate for estimating the SG&A and financial expense rates because, in addition to producing and selling circular welded non—alloy pipe, this Mexican producer was also involved in the sale and distribution of seamless refined copper tube in the Mexican market. *See* Petitions at 33, footnote 35;

<sup>2</sup> Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries, imports from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non—industry-specific export subsidies, and imports labeled as being from “unspecified countries.”

see also Supplement to the Petitions, dated October 13, 2009, at 29.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

#### Normal Value Based on Constructed Value

Because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioners calculated NV based on constructed value ("CV"). Petitioners calculated CV using the same COM, SG&A, financial expense and packing figures used to compute the COP. Petitioners then added a profit rate based on the fiscal year 2008 financial statements of a Mexican producer of welded steel pipe. *Id.*

#### Fair-Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of copper pipe and tube from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margin for copper pipe and tube from the PRC is 60.5 percent. See PRC Initiation Checklist at 10; see also Supplement to the PRC Petition, dated October 15, 2009, at Exhibit W. Based on a comparison of EPs and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for copper pipe and tube from Mexico range from 76.5 percent to 85.7 percent. See Mexico Initiation Checklist at 10, Supplement to the Petitions, dated October 13, 2009, at 31 and Supplement to the Petitions, dated October 16, 2009 at 3-4, and Exhibits 55 and 56.

#### Initiation of Antidumping Investigations

Based upon the examination of the Petitions on copper pipe and tube from the PRC and Mexico, the Department finds that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of copper pipe and tube from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1),

unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

#### Targeted-Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that "{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." See *id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted-dumping allegation in either of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country-specific preliminary determination.

#### Respondent Selection

##### The PRC

For this investigation, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in the Petitions, and Supplement to the Petitions, dated October 13, 2009, at 13-15. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). The Department will post the quantity and value questionnaire along with the filing instructions on the Import

Administration website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> and a response to the quantity and value questionnaire is due no later than November 10, 2009.

#### Mexico

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports under the Harmonized Tariff Schedule of the United States ("HTSUS") numbers 7411.10.1030 and 7411.10.1090, the two HTSUS categories most specific to the subject merchandise, during the POI. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within ten days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

#### Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) ("Separate Rates and Combination Rates Bulletin"), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application

will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of the publication of this initiation notice in the **Federal Register**.

**Use of Combination Rates in an NME Investigation**

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation. See Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

**Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the representatives of the Governments of the PRC and Mexico. Because of the

large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public versions of the Petitions to the Governments of the PRC and Mexico, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, no later than November 16, 2009, whether there is a reasonable indication that imports of copper pipe and tube from the PRC and Mexico are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 20, 2009.

**Ronald K. Lorentzen,**  
*Acting Assistant Secretary for Import Administration.*

**Appendix I**

**Scope of the Investigations**

For the purpose of these investigations, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of these investigations covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M,

ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of these investigations are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

ELEMENT	LIMITING CONTENT PERCENT BY WEIGHT
Ag - Silver .....	0.25
As - Arsenic .....	0.5
Cd - Cadmium .....	1.3
Cr - Chromium .....	1.4
Mg - Magnesium .....	0.8
Pb - Lead .....	1.5
S - Sulfur .....	0.7
Sn - Tin .....	0.8
Te - Tellurium .....	0.8
Zn - Zinc .....	1.0
Zr - Zirconium .....	0.3
Other elements (each) ..	0.3

Excluded from the scope of these investigations are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length.

The products subject to these investigations are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to these investigations may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

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