

inadvertently mis-allocated fixed and variable overhead costs.

**Farmer 23**—The CWB alleges that the Department inadvertently understated actual labor costs allocated to livestock, thereby overstating the general and administrative (“G&A”) and interest expenses allocated to HRS. The CWB also alleges that the Department inadvertently excluded variable overhead costs related to non-farming activities, thereby overstating the G&A and interest expenses allocated to HRS.

The North Dakota Wheat Commission (“the petitioner”) submitted comments on the CWB’s ministerial error allegations on September 10, 2003. The petitioner did not comment on the CWB’s ministerial error allegations for Farmer 8 and the allocation of labor costs to livestock for Farmer 23. In response to the CWB’s other allegations, the petitioner argues that they were not ministerial.

In accordance with section 735(e) of the Act, we have determined that certain ministerial errors were made in the calculation of the CWB’s COP and constructed value (“CV”) in our final margin calculations. For a detailed discussion of the above-cited ministerial error allegations and the Department’s analysis, see Memorandum to Jeffrey A. May, “Allegation of Ministerial Errors; Final Determination in the Antidumping Duty Investigation of Certain Hard Red Spring Wheat from Canada” dated September 26, 2003, which is on file in room B-099 of the main Commerce building.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of HRS Wheat from Canada to correct the ministerial errors found in the calculation of the COP and CV. The final weighted-average dumping margins are:

Exporter/manufac- turer	Original weighted- average margin percent- age	Amended weighted- average margin percent- age
Canadian Wheat Board .....	8.87	8.86
All Others .....	8.87	8.86

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (“BCBP”) to continue to suspend liquidation of all imports of subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or

after May 8, 2003, the date of publication of the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum and Hard Red Spring Wheat from Canada*, 68 FR 24707 (May 8, 2003) in the **Federal Register**. The BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

### ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 29, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-832 and A-489-812]

### Notice of Initiation of Antidumping Investigations: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey

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

**ACTION:** Initiation of Antidumping Investigations.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor (Mexico) at 202-482-5831; Mark Manning (Turkey) at 202-482-5253 or Ronald Trentham at 202-482-6320, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

### SUPPLEMENTARY INFORMATION:

#### Initiation of Investigations

#### The Petition

On September 9, 2003, the Department of Commerce (the Department) received a petition filed in proper form by California Steel and Tube; Hannibal Industries, Inc.; Leavitt Tube Company, LLC; Maruichi American Corporation; Northwest Pipe

Company; Searing Industries, Inc.; Vest Inc.; and Western Tube and Conduit Corporation (collectively, the petitioners). See Letter from Schagrin Associates to Secretary Evans of the Department and Secretary Abbott of the U.S. International Trade Commission (ITC), “Petition for the Imposition of Antidumping Duties: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey” (September 9, 2003) (Petition). The petitioners are domestic producers of light-walled rectangular (LWR) pipe and tube products. In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of LWR pipe and tube from Mexico and Turkey are being, or are likely to be, sold in the United States at less-than-fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure an industry in the United States.

The Department issued a questionnaire to the petitioners on September 12, 2003, to clarify certain aspects of the Petition. The petitioners responded with the requested supplemental information on September 22, 2003. On September 23, 2003, two Mexican producers, and two U.S. importers of Mexican LWR pipe and tube (collectively, the Mexican industry), filed a submission in which they argued that the petitioners have not adequately established that they represent over 50 percent of the U.S. domestic industry. The Department issued a second questionnaire to the petitioners on September 24, 2003. The petitioners, on September 26, 2003, responded to the Department’s second questionnaire and, in addition, provided rebuttal comments concerning the Mexican industry’s allegations. On September 26 and 29, 2003, the Mexican industry responded to the petitioners’ September 22, 2003 rebuttal comments and reiterated the arguments made in its September 23, 2003 submission, respectively.

After reviewing the contents of the Petition and the two amendments provided by the petitioners, the Department finds that the petitioners filed the Petition 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 investigations they are presently seeking. See, “Determination of Industry Support for the Petitions,” below.

### Period of Investigation

The period of investigation (POI) for these cases will be July 1, 2002, through June 30, 2003. See 19 CFR 351.204(b)(1).

### Scope of Investigations

The merchandise covered by these investigations are LWR pipe and tube from Mexico and Turkey, which are welded carbon-quality pipe and tube of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. These LWR pipe and tube have rectangular cross sections ranging from 0.375 x 0.625 inches to 2 x 6 inches, or square cross sections ranging from 0.375 to 4 inches, regardless of specification. LWR pipe and tube are currently classifiable under item number 7306.60.5000 of the Harmonized Tariff System of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes only. The written product description of the scope is dispositive.

The term "carbon-quality" applies to products in which (i) iron predominates, by weight, over each of the other contained elements, (ii) the carbon content is 2 percent or less, by weight, and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

### Determination of Industry Support for the Petition

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 the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) 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: (1) 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 (2) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers 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 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 (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, 642-44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise

is in the class of merchandise sold at LTFV").

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.

The domestic like product defined in the Petition does not differ from the scope of the investigations defined in the *Scope of Investigations* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition. See *Import Administration Antidumping Investigation Checklist* (September 29, 2003) at 2 (*Initiation Checklist*) (the public version on file in the Central Records Unit of the Department, Room B-099, Main Commerce Building).

The Department has further determined that, pursuant to section 732(c)(4)(A) of the Act, the Petition contains adequate evidence of industry support, and, therefore, polling is unnecessary. Information contained in the Petition demonstrates that the domestic producers or workers who support the Petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the Petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. See *Initiation Checklist*, at 3-4 and Attachment I. As mentioned above, the Department received opposition to the Petition from the Mexican industry. We note that the Mexican companies opposed to the petition are not domestic producers of LWR pipe and tube. Although we reviewed and analyzed the arguments made by the Mexican industry, we continue to find that the domestic producers or workers who support the Petition 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 Petition. See *Initiation Checklist*, at 3 and Attachment I. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act are also met.

Accordingly, the Department determines that the Petition was filed on

behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *Id.* at 3–4.

#### Export Price and Normal Value

The following are descriptions of the allegations of sales at LTFV upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production (COP) and constructed value (CV) have been accorded treatment as business proprietary information. The petitioners' sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

#### Mexico

##### Export Price

The petitioners calculated export price (EP) through two different methods, using price quotes and the average unit value (AUV) for LWR pipe and tube imported from Mexico based upon IM-145 import data for the anticipated POI provided by the Bureau of Customs and Border Patrol (BCBP). First, the petitioners identified two sizes of LWR pipe and tube commonly sold in the U.S. market. The petitioners submitted four price quotes, two for each size of LWR pipe and tube, obtained from U.S. distributors of Mexican products, identical in size to the home market products, acquired from Mexican producers. The petitioners calculated net U.S. prices by deducting foreign inland freight, U.S. import duties, and U.S. inland freight. The petitioners stated that packing charges are included in both the home market and the United States. However, because home market packing is not significantly different from packing for export to the U.S. market, the petitioners did not make any adjustments for packing when calculating the margins. *See Initiation Checklist* at 6–7.

Second, the petitioners calculated EP using the AUV for LWR pipe and tube imported from Mexico. The petitioners did not deduct international freight because the AUV provides the free alongside ship (FAS) value at the foreign port. The petitioners deducted foreign inland freight from the AUV to calculate EP. *Id.*

##### Normal Value

To calculate normal value (NV), the petitioners provided two price quotes, one for each size of LWR pipe and tube, obtained through foreign market research regarding products manufactured by a major Mexican producer named in the Petition and offered for sale to unaffiliated Mexican purchasers. The petitioners calculated net Mexican prices by deducting inland freight because the price quote was for delivery to a specific location in Mexico. *See Initiation Checklist* at 7–8; *see also* Mexico Export Price section *infra* for discussion of packing charges.

Based on comparisons of EP (method derived from price quotes) to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for LWR pipe and tube from Mexico range from 48.42 percent to 83.86 percent.

#### Turkey

##### Export Price

The petitioners calculated EP for Turkey using two different methods. First, as with Mexico, the petitioners identified two sizes of LWR pipe and tube commonly sold in the U.S. market. The petitioners submitted four price quotes, two for each size of LWR pipe and tube, obtained from U.S. distributors of Turkish products, identical in size to the home market products, acquired from producers in Turkey. The petitioners calculated net U.S. prices by deducting international freight and U.S. import duties. The petitioners stated that packing charges are included in both the home market and the United States. However, because home market packing is not significantly different from packing for export to the U.S. market, the petitioners did not make any adjustments for packing when calculating the margins. *See Initiation Checklist* at 8–9.

The petitioners also calculated EP using the AUV for LWR pipe and tube imported from Turkey, based upon IM-145 import data for the anticipated POI provided by BCBP. The petitioners did not deduct international freight because the AUV provides the FAS value at the foreign port. *Id.*

##### Normal Value

To calculate NV, the petitioners obtained through foreign market research two price quotes, one for each size of LWR pipe and tube, from resellers in Turkey regarding products manufactured by a major Turkish producer named in the Petition. The petitioners calculated net Turkish prices

by deducting the average discount offered by the Turkish resellers. *See Initiation Checklist* at 9–11; *see also* Export Price section *infra* for discussion of packing charges.

Although the petitioners provided margins based on a price-to-price and price-to-AUV comparisons, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of LWR pipe and tube in the home 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. *See Initiation of Cost Investigation* section *infra* for further discussion.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); selling, general, and administrative expenses (SG&A); financial expenses; and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce LWR pipe and tube in the United States and in Turkey using publicly available data. We corrected an error in converting CV from dollars per metric ton (MT) to dollars per hundred feet for one of the products. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2002 financial statements of Borusan Holding A.S., which is the parent company of Mannesman Boru, a principal producer of the subject merchandise in Turkey. Packing costs were omitted from the COP calculations. 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.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also calculated a NV for sales in Turkey based on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Turkish home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amount reported in the Turkish LWR pipe & tube producer's 2002 financial statements which was zero because the producer experienced a loss.

Based on comparisons of EP (method derived from price quotes) to CV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for LWR pipe and tube from Turkey range from 27.04 percent to 34.89 percent. We note that these margins are conservative since the petitioners did not include packing in the CV calculation.

#### Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of Turkey were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation for this country. The Statement of Administrative Action (SAA), submitted to the U.S. 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. SAA, H.R. Doc. No. 103-316 at 833 (1994). The SAA 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." *Id.*

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce 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.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Turkey were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

#### Fair Value Comparisons

Based on the data provided by the petitioners, the Department finds that there is reason to believe that imports of

LWR pipe and tube from Mexico and Turkey are being, or are likely to be, sold at LTFV.

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

With respect to Mexico and Turkey, the petitioners allege the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in examining market share, production, shipments, capacity utilization, lost sales, profit and employment. *See* Petition at 21-25 and Exhibits 14-29. The petitioners assert that their share of the market has declined from 2000 to 2002. *See* Petition at 21-22 and Exhibits 18-19. Finally, the petitioners note that one LWR pipe and tube manufacturer went out of business altogether in 2002, thereby taking significant domestic LWR pipe and tube production out of the market. *See* Petition at 23. For a full discussion of the allegations and evidence of material injury, *see* *Initiation Checklist* at Attachment II.

#### Initiation of Antidumping Investigations

Based on our examination of the Petition covering LWR pipe and tube from Mexico and Turkey, the Department finds it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping investigations to determine whether imports of LWR pipe and tube from Mexico and Turkey are being, or are likely to be, sold in the United States at LTFV. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the governments of Mexico and Turkey. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

#### ITC Notification

The ITC will preliminarily determine no later than October 24, 2003, whether there is reasonable indication that imports of LWR pipe and tube from

Mexico and Turkey are causing, or threatening, material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to 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: September 29, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-806]

#### Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part

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

**ACTION:** Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part.

**SUMMARY:** On July 28, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 2001, through June 30, 2002. This review covers imports of silicon metal from one producer/exporter, Companhia Brasileira Carbureto de Calcio (CBCC). We provided interested parties an opportunity to comment on the preliminary results of this review, but received no comments.

The final results do not differ from the preliminary results of this review, where we found that sales of the subject merchandise have not been made below normal value (NV), and where we revoked the order, in part, with respect to CBCC, because we found that CBCC has met all of the requirements for revocation, as set forth in 19 C.F.R. 351.222(b). We will instruct the United States Bureau of Customs and Border Protection (BCBP) not to assess antidumping duties on the subject merchandise exported by CBCC.

**EFFECTIVE DATE:** October 6, 2003./P≤

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor at (202) 482-5831 or Ronald Trentham at (202) 482-6320,