

**DEPARTMENT OF COMMERCE****International Trade Administration****A-570-922****Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Raw Flexible Magnets from the People's Republic of China**

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

**EFFECTIVE DATE:** January 31, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Blackledge or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-3518 or (202) 482-0679, respectively.

**SUPPLEMENTARY INFORMATION:****Postponement of Preliminary Determination**

On October 18, 2007, the Department of Commerce (the "Department") initiated the antidumping duty investigation of raw flexible magnets from the People's Republic of China. *See Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan*, 72 FR 59071 (July 24, 2007) ("Initiation Notice"). The notice of initiation stated that, unless postponed, the Department would make its preliminary determination in these antidumping duty investigations no later than 140 days after the date of the initiation. *See Initiation Notice*.

On January 16, 2008, Magnum Magnetics Corporation ("Petitioner") made a timely request pursuant to 19 CFR 351.205(e) for a fifty-day postponement of the preliminary determination in this investigation. Petitioner requested postponement of the preliminary determination because of the complexity of the case, the Department's unfamiliarity with the industry, and the difficult time schedule ahead. For the reasons identified by the Petitioner, and because there are no compelling reasons to deny the request, the Department is postponing the preliminary determination under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the "Act"), by fifty days from February 29, 2008 to April 19, 2008. However, as that date falls on a Saturday, the preliminary determination will be due no later than the next business day, Monday, April 21, 2008. The deadline for the final determination will continue to be 75 days after the

date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: January 24, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE****International Trade Administration****[A-580-859]****Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Light-Walled Rectangular Pipe and Tube From the Republic of Korea**

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

**EFFECTIVE DATE:** January 31, 2008.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request from Nexteel Co., Ltd. (Nexteel), we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

**FOR FURTHER INFORMATION CONTACT:**

David Cordell, (Kukje Steel Co., Ltd.), Mark Flessner (Nexteel Co., Ltd.), or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0408, (202) 482-6312, or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On July 17, 2007, the Department initiated the antidumping duty

investigation of light-walled rectangular pipe and tube from the Republic of Korea. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from the Republic of Korea, Mexico, Turkey, and the People's Republic of China*, (Initiation Notice), 72 FR 40274 (July 24, 2007). The Petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (Petitioners).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments. *See Initiation Notice*, 72 FR 40274, 40275 (July 24, 2007). No party submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (the Commission) preliminarily determined there is a reasonable indication that imports of light-walled rectangular pipe and tube from Korea, Mexico and Turkey are materially injuring the U.S. industry and notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey*, Investigation Nos. 701-TA-449 and 731-TA-1118-1121 (Preliminary), 72 FR 49310 (August 28, 2007).

Section 777A(c)(1) of the Tariff Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of light-walled rectangular pipe and tube from the Republic of Korea (Korea) and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(2) of the Tariff Act. The Department sent quantity and value (Q&V) questionnaires to the companies identified in the petition, as well as to other companies identified during our analysis. On July 31, 2007, the Department sent Q&V questionnaires to the following companies: Ahshin Pipe & Tube, Dong-A Steel Pipe Co. Ltd., Han Gyu Rae Steel Co., Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Kukje Steel Co. (Kukje), Ltd., Miju Steel Mfg. Co. Ltd., Nexteel, SeAH Steel Corporation, Ltd. (SeAH), and Yujin Steel Industry Co.

Ahshin Pipe & Tube mailed its response by first class mail dated August 20, 2007, but that letter was not

submitted as required through our Central Records Unit, did not include a complete response to the Department's Q&V questionnaire or include the required certifications, and was not served on all interested parties. Consequently, the response did not comport with 19 CFR 351.103, 351.302(d)(1), 351.303(f)(2) and 351.303(g), and was returned to Ahshin Pipe & Tube on September 7, 2007.

On August 27, 2007 and September 28, 2007, the Department requested that Han Gyu Rae Steel Co., Ltd., (Han Gyu Rae) resubmit its public version of its response to the Q&V questionnaire which it had submitted on August 17, 2007, because a proper public version was not provided. In its September 28, 2007, letter the Department warned Han Gyu Rae that it may not accept the response as currently filed and that the Department may apply facts available in accordance with section 776 of the Tariff Act, and pursuant to 19 CFR 351.308. The Department received no reply from Han Gyu Rae and thus returned its August 17, 2007, submission on November 9, 2007. Furthermore, the Department did not receive any response at all to either its July 31, 2007, quantity and value questionnaire or its August 16, 2007, follow-up letter from the following companies: Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., and Yujin Steel Industry Co.<sup>1</sup>

Three respondents—SeAH, Kukje and Nexteel—responded to the Department's Q&V questionnaire. Kukje and Nexteel accounted for the largest volume of subject merchandise exported to the United States during the period of investigation (POI). Hence, these two firms were selected as mandatory respondents pursuant to section 777A(c)(2)(1)(B) of the Tariff Act. See the September 5, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, entitled "Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from the Republic of Korea (Korea) (A-580-859), Respondent Selection" (Respondent Selection Memorandum). We issued antidumping questionnaires to Kukje and Nexteel on September 7, 2007.

The Department received the Section A response from Kukje on October 5, 2007, and from Nexteel on October 10, 2007. Petitioners provided comments on Kukje's and Nexteel's Section A

responses on October 16, 2007. On October 19, 2007, the Department issued Nexteel a supplemental questionnaire concerning its October 10, 2007, Section A response. On October 22, 2007, Kukje informed the Department that Kukje was unable to respond further to the antidumping questionnaire. We received the Sections B and C responses from Nexteel on October 29, 2007. Nexteel also responded voluntarily to Section D, Cost of Production, in this submission.

On November 9, 2007, Petitioners provided comments on Nexteel's Sections B and C response, and submitted a cost allegation with respect to Nexteel. On November 27, 2007, the Department issued a supplemental questionnaire to Nexteel concerning Nexteel's Sections B and C response, to which Nexteel responded on December 19, 2007.

On December 7, 2007, the Department initiated a cost investigation on Nexteel. See memorandum from Mark Flessner, Case Analyst, and Christopher J. Zimpo, Accountant, to Richard O. Weible, Director, Office 7, entitled "Petitioners' Allegation of Sales Below the Cost of Production for Nexteel Co. Ltd.," dated December 7, 2007 (Cost Allegation Memorandum). On December 21, 2007, the Department issued a supplemental questionnaire to Nexteel concerning Nexteel's Section D response, to which Nexteel responded on January 10, 2008.

On December 26, 2007, petitioners timely filed with the Department an allegation of targeted dumping for Nexteel. Nexteel filed comments regarding petitioners' allegation on January 3, 2008. Upon review of petitioners' allegation, the Department determined that further information was needed in order to adequately analyze petitioners' allegation. The Department issued a supplemental questionnaire to petitioners on January 14, 2008, requesting that they address deficiencies identified by the Department. See Letter from Richard O. Weible, Director, Office 7, to Petitioners, dated January 14, 2008. Because there was a need for supplemental information regarding the allegation, we do not have sufficient bases for making a finding of targeted dumping prior to the January 23, 2008, deadline for issuance of the preliminary determination. We intend to address the allegation in full upon receipt of a satisfactory response by Petitioners to our request for additional information.

On October 19, 2007, the Petitioners requested the Department postpone the preliminary determination by 50 days pursuant to 19 CFR 351.205(e). The Department published a notice of postponement on November 14, 2007,

which set the new deadline for the preliminary determination at January 23, 2008. See *Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 72 FR 64044 (November 14, 2007).

#### Period of Investigation

The POI is April 1, 2006, to March 31, 2007.

#### Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which 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, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### Model Match

In accordance with section 771(16) of the Tariff Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Korea during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in the investigation of light-walled rectangular pipe and tube from the Republic of Korea and in the concurrent antidumping duty investigations of light-walled

<sup>1</sup> The Department sent its questionnaires and its follow up letter via an international delivery service. Records show each of the companies in question received and signed for the July 31, 2007, quantity and value questionnaire and the August 16, 2007, follow-up letter.

rectangular pipe and tube from Mexico, Turkey, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products; parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Mexico and Turkey were also invited to comment on the appropriate model matching methodology. *See* Letter from Richard Weible, Director, Office 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM on August 23, 2007; from the Mexican companies Productos Laminados de Monterrey S.A. de C.V. and Prolamsa USA, Inc. on August 24, 2007 August 27, 2007 and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the Petitioners on August 24, 2007. The Department did not make any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type, whether metallic coated or not, whether painted or not, perimeter, wall thickness and shape. 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 the next most similar foreign like product on the basis of the characteristics listed above.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the following nine companies: Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae, and Kukje. As noted in the Supplementary Information section above, the first six companies failed to respond to the Department's Q&V questionnaire and to the Department's follow up letter of August 16, 2007. Ahshin Pipe & Tube submitted an improper, incomplete, and untimely Q&V questionnaire response that the Department returned; Han Gyu Rae failed to resubmit its August 17, 2007 Q&V response and the Department returned Han Gyu Rae's Q&V submission on November 9, 2007. On October 22, 2007, Kukje informed the

Department that it was unable to respond further to the antidumping questionnaire.

Section 776(a)(2) of the Tariff Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(I), the administering authority shall use, subject to section 782(d) of the Tariff Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Tariff Act provides that, if the administering authority determines a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Tariff Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, and Han Gyu Rae all failed to provide necessary information by the deadlines for submission of the information and/or in the form or manner requested. Thus, for these eight companies in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin on facts otherwise available.

Kukje, one of the mandatory respondents, did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, Kukje failed to provide a complete response to our questionnaire, thereby withholding, among other things, home-market and U.S. sales information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Tariff Act. Thus, in

reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for Kukje on facts otherwise available.

#### Application of Adverse Inferences for Facts Available

According to section 776(b) of the Tariff Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See, e.g., id.* Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); *see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

Although the Department provided all respondents, including Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje, with notice informing them of the consequences of their failure to respond adequately to the questionnaire in this case, pursuant to section 782(d) of the Tariff Act, the companies listed above did not respond as requested. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Tariff Act.<sup>2</sup> Based on the above, the

<sup>2</sup> As noted earlier, the Department sent its quantity and value questionnaires and its follow up letter via an international delivery service and records show that each of the companies in question received and signed for the July 31, 2007,

Department has preliminarily determined that Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Tariff Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c). It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 30.66 percent. *See Initiation Notice* at 40278.

When using facts otherwise available, section 776(c) of the Tariff Act provides that when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from

independent sources that are reasonably at its disposal.

To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, vol. 1 (1994) at 870 (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-4199. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d).

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist*. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export price and normal value calculations used in the Petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the Petition or in supplements to the Petition that corroborates key elements of the export price and normal value calculations used in the Petition to derive estimated margins.

Specifically, the Petitioners calculated an export price using U.S. price quotes

it obtained for light-walled rectangular pipe and tube from Korea. These price quotes identify the price that the first U.S. purchaser unaffiliated with the foreign producer, *i.e.*, the international trader/importer, offered to its customer. The Petitioners also calculated a second export price using the average monthly Customs Unit Values (AUVs) ((Free Alongside Ship) (F.A.S.)) of light-walled rectangular pipe and tube from Korea for consumption in the United States, classified under HTSUS numbers 7306.60.50.00 and 7306.61.50.00, gathered from the Bureau of the Census IM145 import statistics. We then compared the U.S. price quote to the AUVs for this period and confirmed that the value of the U.S. price quote was consistent with the AUV's. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the Petition.

The Petitioners adjusted export prices for international freight and dealer mark-up. The Petitioners used the difference between the F.A.S. and C.I.F. AUVs for imports from Korea to the United States to calculate international freight costs. *See* Petition at page II-10; *see also* July 6, 2007 Supplement to the Petition at 6. These data are from the U.S. Customs and Border Protection (CBP) and the U.S. Census Bureau, which are sources of information that we consider reliable. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538, 48540 (August 18, 2005), (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the adjusted information provided in the Petition. The Petitioners estimated the distributor mark-up based on Searing Industries sales personnel's knowledge of importer's mark-ups in the domestic light-walled rectangular tubing industry. The Petitioners provided an affidavit from persons attesting to the validity of the distributor mark-up value the Petitioners used in the calculation of net U.S. price. *See Initiation Checklist* at 9.

Based on our examination of the aforementioned information, we consider the Petitioners' calculation of net U.S. prices corroborated.

With respect to normal value, the Petitioners derived Korean home market prices from a January 2007 edition of the *Korean Metal Journal*, a recognized industry journal; no evidence on the

quantity and value questionnaire and the August 16, 2007, follow-up letter.

record questions the validity of this source. Two series of prices were listed: a "consumer" price (based on destination) and a "wholesale price." As a conservative measure, the lower-valued wholesale price was selected; this is more reflective of sales to distributors. Prices were quoted in won per meter and were converted into U.S. dollars using an average dollar weight for the proposed POI. The prices were also converted from meters to hundred-pound-weight (cwt), as cwt is the weight by which the subject merchandise is typically sold in the United States. Petitioners claim the delivery term for the wholesale price is ex-factory as demonstrated by the single price for all regions of the country, whereas consumer prices vary by different regions of the country suggesting the inclusion of freight. Petitioners note the products for which they obtained U.S. prices fall within the product category used for Normal Value (NV) from the *Korean Metal Journal*. See Volume II of the Petition at pages 9–10 and Exhibits II 21–23 and Volume II of the Supplement to the Petition dated July 6, 2007 at pages 1–2 and Exhibit 1.

Based on our examination of the aforementioned information, we consider the Petitioners' calculation of net home market prices corroborated.

We also examined information obtained from interested parties to corroborate the home market and U.S. prices. Margin percentages calculated for Nexteel exceeded those from the Petition.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents, publicly available information, and primary information submitted by respondent Nexteel, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's

uncharacteristic business expense that resulted in an unusually high dumping margin.

In *American Silicon Technologies v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court affirmed Commerce's adverse facts-available rate, noting that it bore a "rational relationship" to the respondent's "commercial practices," and was, therefore, relevant. As described above, in the pre-initiation stage of this investigation, we confirmed the calculation of margins in the Petition reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine the highest margin in the Petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts-available rate for Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to Dong-A Steel Pipe Co. Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje in this investigation, we have corroborated the adverse facts-available rate "to the extent practicable." See section 776(c) of the Tariff Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, "pursuant to the 'to the extent practicable' language \* \* \* the corroboration requirement itself is not mandatory when not feasible"). Therefore, we find that the estimated margin of 30.66 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to Dong-A Steel Pipe Co. Ltd.,

HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Miju Steel Mfg. Co. Ltd., Yujin Steel Industry Co., Ahshin Pipe & Tube, Han Gyu Rae and Kukje, we have applied the margin rate of 30.66 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*, 72 FR at 40278.

#### Date of Sale

Section 351.401(i) of the Department's regulations states the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i). The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 64 FR 38756, 38767 (July 19, 1999). Nexteel maintains the quantity is fixed on the date of shipment from its factory but that the price is only finalized when Nexteel issues the commercial and tax invoices. The issuance of commercial and tax invoices is frequently after shipment, but was not before shipment for any POI sales in both the home and U.S. markets. Therefore, Nexteel has reported the date of shipment from its factory as the date of sale under the field SALEDATH. See Nexteel's Section B response dated October 29, 2007, at pages B–14 to B–15. However, since the material terms of sale are not finalized until issuance of the commercial invoice, we have preliminarily determined to use date of invoice as the date of sale in both the home and U.S. markets. See Nexteel's supplemental Section B response dated December 26, 2007, at pages 17 to 18.

## Fair Value Comparisons

To determine whether sales of subject merchandise from Korea were made in the United States at less than NV, we compared the export price (EP) to the NV, as described in the *U.S. Price* and *Normal Value* sections below. In accordance with section 777A(d)(1) of the Tariff Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of EP.

## U.S. Price

For the price to the United States, we used EP in accordance with section 772(a) of the Tariff Act. Pursuant to section 772(a) of the Tariff Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price (CEP) was not otherwise warranted based on the facts on the record. Nexteel has no affiliate in the United States and reports all its sales as EP sales. See Nexteel's Section C response at page C-9. Nothing on the record indicates that Nexteel's U.S. market sales are CEP sales, so we did not use the CEP methodology. We based EP on the packed prices charged to the unaffiliated Korean trading companies (as Nexteel knew the merchandise it was selling to that trading company was destined for the United States). See Nexteel's Section A questionnaire response dated October 9, 2007, at page A-11; see also *Wonderful Chemical Industrial, Ltd., et al. v. United States*, 259 F. Supp. 2d 1273, 1279 (Ct. Intl. Trade 2003). There were no reported billing adjustments or duty drawback claims.

In accordance with section 772(c)(2) of the Tariff Act, we make deductions, where appropriate, for movement expenses including inland freight and brokerage expenses from plant to delivery. Due to the nature of Nexteel's U.S. sales (all were made to unaffiliated Korean trading companies who took possession at the Korean port), however, Nexteel had no expenses from plant to delivery other than transportation.

## Normal Value

### A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Nexteel's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise.

Pursuant to section 773(a)(1)(B)(ii)(II) of the Tariff Act, because Nexteel had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

## B. Arm's-Length Test

Nexteel reported sales of the foreign like product to affiliated customers. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, the sales were at "arm's length." See 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. *Id.* In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party would be excluded from the NV calculation. See 19 CFR 351.403(c) see also *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002), and memorandum from Mark Flessner, Case Analyst, to the file entitled, "Preliminary Determination of Sales at Less Than Fair Value of Light-Walled Rectangular Pipe and Tube from the Republic of Korea," dated January 23, 2008 (Analysis Memorandum). No such sales were excluded for Nexteel.

## C. Cost of Production Analysis

Based on our analysis of the Petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Nexteel's sales of light-walled rectangular pipe and tube in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a sales-below-cost investigation to determine whether Nexteel had sales that were made at prices below their respective COPs. See Cost Allegation Memorandum.

## 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Tariff Act, we calculated Nexteel's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses).

The Department relied upon Nexteel's COP and CV information from the company's submission dated January 10, 2008. To determine COP, the reported cost of manufacturing data (TOTCOM) were adjusted by incorporating G&A expenses and financial expenses based on Nexteel's financial statements, and included in Nexteel's section D response at Exhibits D-9 and D-10, respectively.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. Pursuant to section 773(b)(2)(c) of the Tariff Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at



prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test indicated that for certain Nexteel models, 20 percent or more of the home market sales volume (by weight) were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales in the calculation of NV.

#### *D. Calculation of Normal Value Based on Comparison Market Prices*

We based home market prices on packed prices to unaffiliated purchasers in Korea. We adjusted the starting price for inland freight, warehouse expense, and warehouse revenue, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Tariff Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit and other direct selling expenses), where appropriate. *See* 19 CFR 351.410(c).

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

#### *E. Level of Trade/Constructed Export Price Offset*

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. *See Micron*

*Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). Nexteel reported sales through one LOT corresponding to two channels of distribution in the home market. In the U.S. market, Nexteel reported one LOT corresponding to one channel of distribution for the EP sales made through unaffiliated Korean trading companies (as stated above, there were no CEP sales during the POI). In our analysis, we determined that there is one LOT in the home market and one LOT in the U.S. market. Nexteel did not claim that there were differing LOTs in the home and U.S. markets. Our analysis of the various selling functions indicates no differing LOTs in the home and U.S. markets. *See* Nexteel's section A questionnaire response dated October 9, 2007, at Exhibit A-5; Nexteel's Selling Function Chart shows the same level of activity in each market for every function listed in this exhibit. We have therefore preliminarily determined that sales to the U.S. and home markets were made at the same LOT, and as a result, no LOT adjustment was warranted.

#### **Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### **All-Others Rate**

Section 735(c)(5)(B) of the Tariff Act states: "If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any

reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." Nexteel is the only respondent in this investigation for which the Department has calculated a company-specific rate. This rate, however, is *de minimis*. Nine remaining companies all received a margin based entirely on AFA under section 776 of the Tariff Act. One company, SeAH, will receive the all-others rate (*i.e.*, its rate was not calculated, as stated above). Therefore, for purposes of determining the all-others rate, because there are no other rates than *de minimis* or those based on AFA, we have reasonably determined to take a simple average of the AFA rate (30.66 percent) and the *de minimis* rate calculated for Nexteel (1.30 percent); therefore, 15.98 percent is the average to be assigned for the all-others rate, as referenced in the *Suspension of Liquidation* section, below.

#### **Verification**

As provided in section 782(i) of the Tariff Act, we intend to verify information upon which we will rely in making our final determination.

#### **Preliminary Determination**

We preliminarily determine the following weighted-average dumping margins exist for the period April 1, 2006 through March 31, 2007:

Producer/exporter	Weighted-average margin (percentage)
Nexteel Co., Ltd. ....	* 1.30
Dong-A Steel Pipe Co. Ltd. ..	30.66
HiSteel Co. Ltd. ....	30.66
Jinbang Steel Co. Ltd. ....	30.66
Joong Won .....	30.66
Miju Steel Mfg. Co., Ltd. ....	30.66
Yujin Steel Industry Co. ....	30.66
Ahshin Pipe & Tube .....	30.66
Han Gyu Rae Steel Co., Ltd. ....	30.66
Kukje Steel Co., Ltd. ....	30.66
SeAH Steel Corporation, Ltd. ....	15.98
All others .....	15.98

\*(*de minimis*).

#### **Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR pipe and tube from the Republic of Korea, with the exception of those produced by Nexteel Co., Ltd. and exported by Nexteel Co., Ltd. or either of the two exporters named in its questionnaire responses, that are

entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart above, as follows: (1) The rate for the firms listed above (except for Nexteel, *see* below) will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 15.98 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

In accordance with 19 CFR 351.204(e)(2), because the weighted-average margin for Nexteel is *de minimis*, we will instruct CBP not to suspend liquidation of merchandise produced by Nexteel Co., Ltd. and exported by Nexteel Co., Ltd. or either of the two exporters named in its questionnaire responses.

#### Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of light-walled rectangular pipe and tube from Korea are materially injuring, or threaten material injury to, the U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the Commission will make its final determination within 45 days of our final determination.

#### Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties the calculations performed in this preliminary determination within five days of the date of the public announcement.

#### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited

to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Tariff Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and place to be determined. However, parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Tariff Act, on January 3, 2008, Nexteel, which accounted for a significant proportion of exports of light-walled rectangular pipe and tube, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Nexteel requested that the Department extend by 60 days the application of the provisional measures. *See* Section 735(a)(2) of the Tariff Act and 19 CFR 351.210(e)(2). In accordance with section 733(d) of the Tariff Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and

(3) no compelling reasons for denial exist, we are granting Nexteel's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: January 23, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. 08-415 Filed 1-30-08; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-916]

#### Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination

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

**DATES:** *Effective Date:* January 31, 2008.

**SUMMARY:** We preliminarily determine that laminated woven sacks from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. We will make our final determination within 135 days after the publication of this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-3207 or 202-482-2243, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Initiation

On June 28, 2007, the Department of Commerce ("Department") received a petition on imports of laminated woven sacks from the PRC from the Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC,