

to, the U.S. industry.<sup>82</sup> As the Department is postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs.<sup>83</sup> A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if timely requested, the Department will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate 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 after the date of publication of this notice.<sup>84</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 5, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-201-838]**

#### **Seamless Refined Copper Pipe and Tube From Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

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

**SUMMARY:** The U.S. Department of Commerce ("the Department") preliminarily determines that seamless refined copper pipe and tube ("copper pipe and tube") from Mexico is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the 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 submitted on behalf of the respondents, IUSA S.A. de C.V. ("IUSA") and Nacional de Cobre, S.A. de C.V. ("Nacobre"), 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.

**EFFECTIVE DATE:** May 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-1168 or (202) 482-1167, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 20, 2009, the Department initiated the antidumping duty investigation of copper pipe and tube from Mexico. See *Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty*

*Investigations*, 74 FR 55194 (October 27, 2009) ("*Initiation Notice*"). The petitioners in this investigation are Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners").

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Initiation Notice*, 74 FR at 55194. See also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997). For further details, see the "Scope Comments" section of this notice, below. The Department also set aside a time for parties to comment on product characteristics for use in the antidumping duty questionnaire. During November 2009, we received product characteristic comments from the Petitioners and the respondents, IUSA and Nacobre, Mexican producers and exporters of the subject merchandise. For an explanation of the product-comparison criteria used in this investigation, see the "Product Comparisons" section of this notice, below.

On November 30, 2009, the United States International Trade Commission ("ITC") published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of imports from China and Mexico of copper pipe and tube, and the ITC notified the Department of its finding. See *Seamless Refined Copper Pipe and Tube From China and Mexico*, 74 FR 62595 (November 30, 2009); see also USITC Publication 4116 (November 2009), entitled *Seamless Refined Copper Pipe and Tube from China and Mexico: Investigation Nos. 731-TA-1174-1175 (Preliminary)*.

On December 2, 2009, we selected IUSA and Nacobre as the mandatory respondents in this investigation and issued the Department's antidumping duty questionnaire to both respondents. See Memorandum entitled: "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico Selection of Respondents for Individual Review," dated December 2, 2009. IUSA and Nacobre submitted responses to section A (*i.e.*, the section covering general information about the company) of the antidumping duty questionnaire on December 24, 2009, and sections B (*i.e.*, the section covering comparison market sales), C (*i.e.*, the

<sup>82</sup> See section 735(b)(2) of the Act.

<sup>83</sup> See 19 CFR 351.309(c)(1)(i) and (d).

<sup>84</sup> See 19 CFR 351.310(c).

section covering U.S. sales), and D (*i.e.*, the section covering the cost of production (“COP”) and constructed value (“CV”)) of the antidumping duty questionnaire on February 2, 2010. We issued supplemental section A, B, C, and D questionnaires, to which IUSA and Nacobre responded during February, March, and April 2010.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the Record regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010. Accordingly, the revised deadline for the un-extended preliminary determination of this investigation was March 16, 2010.

On February 12, 2010, the petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination. Pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until May 5, 2010. *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 75 FR 8677 (February 25, 2010).

On April 27, 2010, IUSA and Nacobre requested that, in the event of an affirmative preliminary determination in this investigation, the Department: 1) postpone its final determination by 60 days, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, see the “Postponement of Final Determination and Extension of Provisional Measures” section of this notice, below.

#### Period of Investigation

The period of investigation (“POI”) is July 1, 2008, to June 30, 2009. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

#### Scope of Investigation

The products covered under this investigation consist of all copper pipe and tube, 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 this investigation covers, but is not limited to, 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-B359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation are all sets of covered products, including “line sets” of copper pipe and tube (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 CON- TENT 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 this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this investigation 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 this investigation 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 this investigation is dispositive.

#### Scope Comments

In accordance with the preamble to the Department’s regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. On November 12, 2009, Nacobre filed comments concerning the scope of this investigation.<sup>1</sup> In its submission, Nacobre requested that the Department exclude from the scope of the investigation nine categories of copper pipe and tube. Nacobre asserted in its letter that the products covered by its exclusion request are not produced domestically and, therefore, should not be of interest to Petitioners. On January 11, 2010, Petitioners filed comments on Nacobre’s scope exclusion request.<sup>2</sup> Petitioners rebutted Nacobre’s assertion that the products covered by its exclusion request are of no interest to Petitioners and that Petitioners do not and/or cannot produce them. Petitioners stated that they are interested in the categories of products as described by Nacobre. Petitioners contend that all nine categories of copper pipe and tube that Nacobre seeks to exclude fall within the scope. We do not find Nacobre’s arguments made in its scope exclusion requests to be persuasive. Specifically, we find that it is not appropriate in this case to base a request

<sup>1</sup> See letter from Nacobre to the Department titled “Seamless Refined Copper Pipe and Tube from Mexico: Comments on Scope of Investigation,” dated November 12, 2009.

<sup>2</sup> See Letter from Petitioners to the Department titled, “Seamless Refined Copper Pipe and Tube from Mexico: Petitioners’ Rebuttal Comments on Scope of Investigation” (January 11, 2010). Note this letter was re-filed under both case numbers for the instant Mexico and People’s Republic of China investigations. *See* Letter from Pet (March 30, 2010) (“Petitioners’ Rebuttal to Nacobre”).

to exclude certain products from the scope of this investigation on an application or end-use, instead of the physical characteristics of the finished product. We have examined the nine products for which exclusion was proposed and have found that they all fall within the scope of this investigation. See Memorandum from the Team, Office 3, AD/CVD Operations, through James Terpstra, Program Manager, AD/CVD Operations, to Melissa Skinner, Office Director, AD/CVD Operations, entitled, "Scope Exclusion Requests," dated May 5, 2010 ("Scope Exclusion Request Memo").

The Department also received comments submitted on behalf of BrassCraft Manufacturing ("BrassCraft") and Johnson Controls, Inc. ("JCI"). In its letter dated March 16, 2010, BrassCraft seeks to exclude from the scope of the investigation cut-to-length copper tube under 40 inches in length.<sup>3</sup> In its March 30, 2010, comments, Petitioners reject BrassCraft's proposed scope exclusion and reject the stated rationale.<sup>4</sup> Based on the language of the scope of the investigation, the Department has determined that copper pipe and tube between six and 40 inches is covered by the scope of the investigation. Therefore, the Department is denying BrassCraft's scope exclusion request.

In its November 10, 2010, letter, JCI seeks to exclude from the scope of the investigation "inner groove copper pipe and tube produced from the cast and roll technology."<sup>5</sup> Petitioners rebut JCI, stating that there are generally no differences in the resulting product from either the extrusion or cast and roll processes. Furthermore, Petitioners assert that it is incorrect for JCI to propose a product exclusion based on a manufacturing process instead of objective physical characteristics for the finished product.<sup>6</sup> The scope of the investigation includes all seamless circular refined copper pipe and tube at least six inches in length, of either smooth bore or enhanced bore (without regard to a specific method of fabrication). Based on the fact that "inner groove" tube is considered to be an "enhanced bore," and is defined by the scope of the investigation, the Department finds that the inner groove

pipe and tube produced from the cast and roll technology referenced by JCI falls within the scope of the investigation.<sup>7</sup>

### Product Comparisons

We have taken into account the comments that were submitted by the interested parties concerning product-comparison criteria. In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the "Scope of Investigation" section, above, and sold in Mexico during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on nine criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: 1) type and ASTM specification, 2) copper alloy unified number system, 3) outer diameter, 4) wall thickness, 5) physical form, 6) temper designation, 7) bore, 8) outer surface, and 9) attachments. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above, which were made in the ordinary course of trade.

### Line Sets

A line set is composed of two sections of copper tubing: a liquid line and a suction line. The tubes have different diameters and wall thicknesses and the suction line is insulated, while the liquid line is not. Line sets are sold as one product and there is not a separate price for each constituent component. See IUSA Section A questionnaire response dated December 24, 2009, at A-64.

During the POI, IUSA sold line sets in the United States which were fully manufactured in Mexico. In order to derive price-based normal values for these sales, Petitioners have proposed several different methods for deriving a price for the constituent elements that are subject merchandise, e.g., allocating the total price by weight. IUSA has argued that it considers line sets as a distinct product, rather than as a collection of different types of subject merchandise. IUSA has also argued that there is no accurate way to derive a price for the constituent elements because the line set product is sold as a combination of two components with additional features (e.g., a liquid line

and suction line which may have insulation added). IUSA claims that it would be distortive to derive a price for the constituent components, because the line set is a unique product which is not sold in the home market. Based on the data reported by IUSA, we preliminarily determine that line sets are sold as one product and, in the absence of home market sales of line sets, we are relying on constructed value as the basis for normal value. See sections 773(e) and (f) of the Act; see also 19 CFR 351.405.

IUSA sells to its U.S. affiliate, Cambridge-Lee Industries ("CLI"), level wound coil, which is further processed in the United States and sold as a line set. See IUSA Section A questionnaire response (revised bracketed version), dated February 19, 2010, at A-67. IUSA also reported that it sells line sets which are made of imported subject merchandise and further processed in the United States. IUSA asked to be excused from reporting further manufacturing costs for the small portion of its line sets that are assembled in the United States by its affiliate. Because the further manufactured sales account for a small portion of IUSA's total U.S. sales, we granted IUSA's request not to respond to Section E (Cost of Further Manufacture or Assembly Performed in the United States) of the Department's questionnaire.<sup>8</sup>

In similar cases where we allow respondents not to report certain information in investigations to simplify reporting, the U.S. sales involved are normally not reported. This case is unique because the affected sales were reported by IUSA.<sup>9</sup> IUSA indicated that its accounting records do not allow it to identify whether the line sets sold in the

<sup>8</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Canned Pineapple Fruit From Thailand*, 60 FR 2734 (January 11, 1995) at 2734-2735. See also; *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991). See also the Department's antidumping duty questionnaire issued to IUSA and Nacobre on December 2, 2009.

<sup>9</sup> IUSA explained that, in addition to the merchandise under investigation manufactured by IUSA in Mexico, IUSA's affiliate, CLI, manufactures copper tube in the United States. CLI also purchases limited quantities of non-subject copper tube from third party producers. Some of the non-subject tube manufactured by CLI or obtained from third party producers is physically identical to subject merchandise manufactured by IUSA and purchased by and added to CLI's inventory. In those instances, the CLI or third party-produced non-subject merchandise is commingled in CLI warehouses with the imports of subject merchandise produced by IUSA in Mexico. See submission from IUSA to Department titled, "Seamless Refined Copper Pipe and Tube from Mexico: Treatment of Commingled Inventory of Non-Subject Merchandise," dated April 27, 2010.

<sup>3</sup> See letter from BrassCraft to the Department, dated March 16, 2010, at 2.

<sup>4</sup> See letter from Petitioners to the Department titled "Seamless Refined Copper Pipe and Tube from Mexico: Petitioners' Rebuttal Comments on Scope of Investigation," dated January 11, 2010. (collectively, "Petitioners' BrassCraft/JCI Comments") at 2-3.

<sup>5</sup> See letter from JCI to the Department, dated November 10, 2010 at 6.

<sup>6</sup> See Petitioners' BrassCraft/JCI Comments at 3-4.

<sup>7</sup> See Scope Exclusion Request Memo.

United States were manufactured in Mexico or further processed in the United States because they are commingled in inventory by its U.S. affiliate, CLI.<sup>10</sup> Therefore, IUSA stated that where products identical to subject merchandise were commingled in CLI's inventory, IUSA reported all CLI sales of the commingled products during the POI. As a result, IUSA's reported U.S. sales database includes all line sets sold, a portion of which are the line sets further manufactured in the United States. Thus, we have some U.S. sales that were further manufactured in the United States but we do not have the relevant costs that would normally be deducted.

IUSA proposed that the sales quantity, for sales of commingled products during the POI, should be based on the ratio of imports of IUSA's merchandise into the United States into CLI's inventory of each Mexican-produced commingled product during the POI to total additions to CLI's inventory of each such commingled product during the POI. For purposes of the preliminary determination, we have accounted for U.S. further manufactured line sets by reducing U.S. sales of line sets by the ratio of sales of further manufactured lines sets to total sales of line sets.<sup>11</sup> See the memorandum titled, "Calculation Memorandum for IUSA, S.A. de C.V. and its affiliates ("IUSA"), for the Preliminary Determination of Antidumping Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated May 5, 2010 ("IUSA Sales Calculation Memo").

### Fair Value Comparisons

To determine whether respondents' sales of copper pipe and tube from Mexico to the United States were made at LTFV, we compared the export price ("EP") and constructed export price ("CEP") to normal value ("NV"), as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to POI weighted-average NVs.

### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the 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 CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

In accordance with section 772(c)(2) of the Act, we calculated EP for a number of IUSA and Nacobre's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, and U.S. customs duty.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by IUSA and Nacobre were made in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Where appropriate, we made deductions from the starting price for foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, U.S. customs duty, credit expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. See sections 772(c)(2)(A) and 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

### Normal Value

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

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondents' volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. See section 773(a)(1)(C) of the Act. Based on this comparison, we determined that respondents had a viable home market during the POI. Consequently, we based NV on home market sales.

#### B. Level of Trade

In accordance with section 773(a)(1)(B) of the 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. Pursuant to 19 CFR 351.412(c)(1)(iii), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses, and profit. For EP sales, the U.S. LOT is based on the starting price of the sales in the U.S. market, which is usually from exporter to importer. See 19 CFR 351.412(c)(1)(i). (For CEP sales, the U.S. LOT is based on the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer. See 19 CFR 351.412(c)(1)(ii).)

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). 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 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 levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act ("the CEP-offset provision"). See *Notice of Final Determination of Sales at Less*

<sup>10</sup> See IUSA's April 12, 2010 submission at 2-3.

<sup>11</sup> See *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995) and accompanying Issues and Decision Memorandum at Comment 8.

*Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-61733 (November 19, 1997).

#### 1. IUSA

In this investigation, we obtained information from IUSA regarding the marketing stages involved in making its reported home market and U.S. market sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution. IUSA reported that it made sales to end users in the home market through two channels of distribution: 1) factory direct to customers; and 2) factory to customer via distribution center. IUSA made both EP sales of subject merchandise to U.S. customers and CEP sales of subject merchandise through its affiliate, CLI.

We examined information from IUSA regarding the marketing stages involved in making its reported home market and U.S. market sales. IUSA described its selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. See IUSA revised Section A response at A-25 to A-28, and Exhibit SQ-4 (A-7). We reviewed the nature of the selling functions and the intensity to which all selling functions were performed for each home market channel of distribution and customer category and between IUSA's EP and home market channels of distribution and customer categories. We found no differences in the levels of intensity performed for selling functions between the two home market channels of distribution. Based on our analysis of all of IUSA's home market selling functions, we find all home market sales were made at the same LOT. Further, we find only minor differences between the sole home market LOT and that of IUSA's EP sales. Accordingly, we preliminarily determine IUSA's home market and EP sales were made at the same LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between IUSA and its customers in the home market, to the CEP LOT, which is based on the selling activities associated with the transaction between IUSA and its affiliated importer, CLI. Our analysis indicates the selling functions performed for home market customers are performed at a higher degree of intensity than the selling functions performed for CLI. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT. Due to the proprietary nature of this discussion, see IUSA Sales Calculation Memo.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this investigation. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the CEP sales. See 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Consequently, because the data available do not form an appropriate basis for making an LOT adjustment, even though the home market LOT is at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. *Id.*

#### 2. Nacobre

We obtained information from Nacobre regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution. In the home market, Nacobre reported that it made sales through two channels of distribution, in which both channels include certain activities performed by its affiliated company to its customers. Nacobre described its selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. See Nacobre's revised Section A questionnaire response (Nacobre's AQR), dated February 12, 2010, at A-5, A-32 to A-33, and Nacobre's AQR at Exhibit A-21. We reviewed the nature of the selling functions and the intensity to which all selling functions were performed for the home market channel of distribution and customer category. Based on our analysis of the selling functions and sales process, we found no appreciable differences in the functions performed in selling to different types of customers in the two home market channels of distribution. Thus, sales to these customers constitute a single marketing stage and, therefore, we continue to find that all of

Nacobre's home market sales were made at one LOT.

In the U.S. market, Nacobre reported that it made sales through two channels of distribution: 1) from Nacobre through its affiliated company to its U.S. customers; and 2) from Nacobre to its customers in Puerto Rico. Nacobre made EP sales of subject merchandise to U.S. customers and CEP sales of subject merchandise through its affiliate, Copper & Brass International Corporation ("CBI"). After adjusting CEP sales in accordance with section 772(d) of the Act, we find no substantial differences in selling activities between EP and CEP sales. Therefore, after adjusting CEP sales in accordance with section 772(d) of the Act, there are no appreciable differences in the functions performed in selling to different types of customers in the two U.S. channels of distribution. Thus, we find that Nacobre's U.S. sales were made at the same LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between Nacobre and its customers in the home market, to the U.S. LOT, which is based on the selling activities associated with the transaction between Nacobre and its affiliated reseller, CBI. Based on our analysis, we find that the selling functions performed for home market customers are at a more advanced stage of distribution than the selling functions performed for CBI. Therefore, we conclude that the NV LOT is at a more advanced stage than the CEP LOT. Due to the proprietary nature of this discussion, see the memorandum titled, "Calculation Memorandum for Nacobre, S.A. de C.V. and its affiliates ("Nacobre"), for the Preliminary Determination of Antidumping Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated May 5, 2010 ("Nacobre Sales Calculation Memo").

Because we found that the home market and U.S. sales were made at different LOTs, we examined whether an LOT adjustment or a CEP offset may be appropriate in this investigation. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the CEP sales. See 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Consequently, because the data available do not form an appropriate

basis for making an LOT adjustment, even though the home market LOT is at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. *Id.*

#### C. Cost Reporting Period

The Department's normal practice is to calculate an annual weighted-average cost for the entire period of investigation or period of review. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that possible distortions may result if our normal annual weighted-average cost method is used during a period of significant cost changes.

Under these circumstances, in determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department has evaluated the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing ("COM") recognized by the respondent during the POI must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production ("COP") or constructed value ("CV") during the same shorter averaging periods. *See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) and *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Administrative Review*, 75 FR 6627 (February 10, 2010).

#### a. Significance of Cost Changes

Record evidence indicates that both IUSA and Nacobre experienced significant changes in the total COM during the POI and that the changes in COM are primarily attributable to the

price volatility for copper, the main input consumed in the production of the merchandise under consideration. The record indicates that copper prices changed dramatically throughout the POI. Specifically, the record data shows that the percentage difference between the high and low quarterly costs for seamless refined copper pipe and tube products exceeded 25 percent during the POI. As a result, we have determined that for the preliminary determination the changes in COM for IUSA and Nacobre are significant.

#### b. Linkage between Cost and Sales Information

If the Department finds cost changes to be significant in a given investigation or administrative review, the Department evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR. Our definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes. *See, e.g., Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review* 75 FR 12204 (March 15, 2010).

In the instant case, based on record evidence we find that the cost changes and sales prices for IUSA and Nacobre appear to be reasonably correlated. Because the data on which we base our analysis contains business proprietary information, a detailed analysis is included in the Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination IUSA, S.A. de C.V." dated May 5, 2010 ("IUSA Preliminary Cost Memorandum"), and Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination Nacional de Cobre, S.A. de C.V." dated May 5, 2010 ("Nacobre Preliminary Cost Memorandum").

In light of the two factors discussed above, we preliminarily determined that it is appropriate to rely on a shorter cost periods with respect to IUSA and Nacobre. Thus, we used quarterly indexed annual average copper costs and annual weighted-average fabrication costs in the COP and CV calculations. *See IUSA Preliminary Cost*

Memorandum and Nacobre Preliminary Cost Memorandum.

#### D. Cost of Production Analysis

Based on the Department's analysis of the Petitioner's allegation in the petition, we initiated a sales-below-cost investigation to determine whether IUSA and Nacobre had sales that were made at prices below their COP pursuant to section 773(b) of the Act. *See Initiation Notice* at 55198.

#### 1. Calculation of Cost of Production

Before making any comparisons to NV, we conducted a quarterly COP analysis of IUSA and Nacobre's pursuant to section 773(b)(3) of the Act to determine whether IUSA and Nacobre's comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act.

The Department relied on the COP data submitted by IUSA and Nacobre and their supplemental section D questionnaire responses for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

#### IUSA:

1. We adjusted IUSA's reported quarterly copper costs to reflect the purchases of copper scrap ingots from affiliated parties at arm's length prices.

For additional details, *see IUSA Preliminary Cost Memorandum*.

#### Nacobre:

1. We reclassified the corporate rent expense from the reported fixed manufacturing overhead costs to G&A expenses.
2. We disallowed certain non-operating income offsets to the G&A expenses because they were inadequately supported. We reduced the denominator of Nacobre's G&A expense ratio by the estimated loss of value of inventory. This estimated loss of value of inventory was not included in the reported costs, however, it was included by Nacobre in its cost of goods sold denominator.
3. We set the reported interest expenses to zero.

For additional details, *see Nacobre Preliminary Cost Memorandum*.

#### 2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the quarterly

weighted average COP to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. See IUSA Sales Calculation Memo and Nacobre Sales Calculation Memo.

### 3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the 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 and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the 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 Act; and (2) based on our comparison of prices to the indexed POI weighted-average COPs, 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 Act.

Therefore, for IUSA and Nacobre, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. See IUSA Sales Calculation Memo and Nacobre Sales Calculation Memo.

### E. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV for IUSA and Nacobre on the reported packed, ex-factory or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments, early payment discounts, rebates, inland freight, foreign inland freight and warehousing expenses where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we

made, where appropriate, circumstance-of-sale adjustments. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

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 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).

### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415(a) based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for IUSA and Nacobre.

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of copper pipe and tube from Mexico 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 also instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Weighted-Average Margin (percent)
IUSA S.A. de C.V. ....	29.52
Nacional de Cobre, S.A. de C.V. ....	32.27
All Others .....	30.90

### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others"

rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. IUSA and Nacobre are the only respondents in this investigation for which the Department has calculated a company-specific rate that is not zero or *de minimis*. Therefore, for purposes of determining the "all others" rate and pursuant to section 735(c)(5)(A) of the Act, we are using the simple average of the dumping margins calculated for IUSA and Nacobre for the "all others" rate, as referenced in the Suspension of Liquidation section, above.

### Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. See 19 CFR 351.224(b).

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

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 27, 2010, IUSA and Nacobre requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (135 days after publication of the preliminary determination) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) our preliminary determination is affirmative; (2) the requesting producers/exporters account for a significant proportion of exports of the



subject merchandise; and (3) no compelling reasons for denial exist, we are granting this 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.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC 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 copper pipe and tube from Mexico are materially injuring, or threatening material injury to, the U.S. industry. *See* section 735(b)(2) of the Act. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

#### 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 last verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is 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 19 CFR 351.309(d)(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(1) of the Act, the Department will hold a public hearing, if timely 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. *See* also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing 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 in a room to be determined. 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. At the hearing, oral presentations will be limited to issues raised in the briefs.

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

Dated: May 5, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-11342 Filed 5-11-10; 8:45 am]

**BILLING CODE 3510-DS-S**

#### DEPARTMENT OF COMMERCE

##### National Telecommunications and Information Administration

[Docket No. 100504212-0212-01]

##### Preventing Contraband Cell Phone Use in Prisons

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of inquiry.

**SUMMARY:** The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) seeks comment on technical approaches to preventing contraband cell phone use in prisons. Congress tasked NTIA with developing, in coordination with the Federal Communications Commission (FCC), the Federal Bureau of Prisons (BOP), and the National Institute of Justice (NIJ), a plan to investigate and evaluate how wireless jamming, detection and other technologies might be utilized for law enforcement and corrections applications in Federal and State prison facilities. To assist in its evaluation of these technologies, NTIA requests information from the public on technologies that would significantly reduce or eliminate contraband cell phone use without negatively affecting commercial wireless and public safety services (including 911 calls and other

government radio services) in areas surrounding prisons.

**DATES:** Comments are requested on or before June 11, 2010.

**ADDRESSES:** Parties may mail written comments to Richard J. Orsulak, Emergency Planning and Public Safety Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1212 New York Avenue, NW., Suite 600B, Washington, DC 20005, with copies to Edward Drocella, Spectrum Engineering and Analysis Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 6725, Washington, DC 20230. Alternatively, comments may be electronically submitted in Microsoft Word format to [contrabandcellphones@ntia.doc.gov](mailto:contrabandcellphones@ntia.doc.gov). Comments will be posted on NTIA's Web site for viewing at <http://www.ntia.doc.gov/osmhome/contrabandcellphones/>.

#### FOR FURTHER INFORMATION CONTACT:

Richard J. Orsulak, Emergency Planning and Public Safety Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1212 New York Avenue, NW., Suite 600B, Washington, DC 20005; telephone (202) 482-9139 or e-mail [rorsulak@ntia.doc.gov](mailto:rorsulak@ntia.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Overview

The mobile phone industry has enjoyed significant growth since the inception of the analog wireless cell phone network in the early 1980s.<sup>1</sup> The 1990s saw the development of digital networks, and thereafter, high-speed data networks became available to consumers. The growth of the mobile phone industry has been fueled, in part, by consumer demand for instant access anywhere and anytime. Features such as data, image, and video communications have also contributed to the overwhelming demand for mobile

<sup>1</sup> For the purpose of this Notice of Inquiry (NOI), the use of the word "cell phone" will refer to any wireless, portable device that is available to the public on a subscription or prepaid basis for delivering voice and/or data services such as text messages. It includes, for example, phones operating within the Cellular Radio Service in the 800 MHz bands; broadband Personal Communications Services (PCS) in the 1.9 GHz bands; the Advanced Wireless Services (AWS) in the 1.7 GHz band; Specialized Mobile Radio (SMR) services in the 800 and 900 MHz bands; and any future mobile wireless devices that plan to operate in bands such as the 700 MHz band.