

Dated: August 8, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-20025 Filed 8-11-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-412-803]

Industrial Nitrocellulose From the United Kingdom; Amendment of Final Results of Antidumping Administrative Review

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

ACTION: Notice of amendment of final results of Antidumping Duty Administrative Review.

SUMMARY: We are amending our final results of administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom published on December 28, 1994, to reflect the correction of a ministerial error made in the margin calculation in those final results. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery of the Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

The review covers one exporter, Imperial Chemical Industries PLC, and the period July 1, 1992 through June 30, 1993. The Department of Commerce (the Department) published the preliminary results on May 12, 1994 (59 FR 24684), and the final results on December 28, 1994 (59 FR 66902).

Scope of Review

This review covers shipments of INC from the United Kingdom. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. It is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3912.20.00. The HTS subheading is provided for convenience and U.S. Customs Service purposes. The written

description remains dispositive. The scope of the antidumping order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Amended Final Results

On January 4, 1995, the petitioner, the Aqualon Company, alleged that the Department had committed a ministerial error in calculating the final antidumping duty margin. The petitioner alleged that the Department had double-counted the home market commission offset. We have reviewed this allegation, and agree with petitioner. We have therefore amended our final results for this ministerial error.

Final Results of Review

Upon review of the allegation submitted, the Department has determined that the following margin exists for the period July 1, 1992 through June 30, 1993:

Manufacturer/exporter	Time period	Margin (per-cent)
Imperial Chemical Industries PLC	7/1/92-6/30/93	6.62

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 11.13 percent established in the final notice of the LTFV investigation.

Unless otherwise stated, all citations to the statutes and to the Department's regulations are references to the provisions as they existed on December 31, 1994. This administrative review and notice are in accordance with section 751(f) of the Act (19 U.S.C. 1673(d)) and section 353.28(c) of the Department's regulations.

Dated: August 4, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-20029 Filed 8-11-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-351-505]

Certain Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On February 22, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. This review covers Industria de Fundicao Tupy S.A. (Tupy), a manufacturer and exporter of this merchandise to the United States, and the period May 1, 1993 through April 30, 1994. The firm failed to submit a response to our questionnaire. As a result, we determined to use the best information otherwise available (BIA) for cash deposit and assessment purposes.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4852/4477.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department published in the **Federal Register** (59

FR 23051) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On May 4, 1994, we received from the petitioners in this case, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., a request to initiate an administrative review of Tupy, a manufacturer and exporter of this merchandise to the United States. On July 15, 1994, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order for Tupy covering the period May 1, 1993 through April 30, 1994 (see 59 FR 36160). On February 22, 1995, we published the preliminary results of this administrative review (see 60 FR 9821).

The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have determined that the use of BIA is appropriate for Tupy. Our regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, as Tupy did here, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate

(including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 57 FR 28360, 28379 (June 24, 1992); see also *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). In our preliminary results of review, we preliminarily applied to Tupy, as first-tier BIA, a rate of 5.64 percent, which was the rate we determined in the LTFV investigation.

Upon review of the comments our choice of a rate to use as first-tier BIA has changed. In this case, Tupy is the only company to have ever been reviewed or investigated, and we have only calculated one margin, which was in the less-than-fair-value (LTFV) investigation. Due to the unusual situation, we have determined to use as BIA the simple average of the rates from the petition. See our response to Comment, below. The rate we have calculated for Tupy is 34.64 percent.

General Issues Raised By the Petitioner

Comment: Petitioner contends that the Department's use of its standard BIA practice for the preliminary results of this review is inappropriate. Petitioner points out that this resulted in no change in the margin applicable to respondent. Petitioner argues that this rewards respondent for being uncooperative with the Department's information requests.

Petitioner also argues that, since Tupy is the sole respondent in this case, under the Department's regular practice, Tupy's margin would never change in an administrative review so long as it does not respond to the Department's requests for information. Thus, Tupy would be able to dump at will without fear of repercussion unless the Department alters its choice of BIA for this case. Petitioner argues that the Department is not limited to the standards enunciated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991). Rather, petitioner states, the Department has the authority to choose other BIA when the circumstances warrant it, citing *Krupp*

Stahl, A.G. v. United States, 822 F. Supp. 789 (CIT 1993) (*Krupp Stahl*) in support of its arguments.

Petitioner suggests that the Department use as BIA the simple average of the margins alleged in the petition. Petitioner also suggests, as an alternative methodology, that the Department should adjust the original margin for appreciation of Brazil's currency against the dollar since the period of the original LTFV investigation. Citing reports from the International Trade Commission (ITC) submitted as an attachment to its case brief, petitioner argues that the Brazilian cruzeiro has appreciated against the dollar between the period of investigation and the current period of review by 33.2 percent, and that the Department should assume that Brazilian foreign market values have increased similarly. Petitioner states that there is precedent for this approach in *Malleable Iron Pipe Fittings, Other than Grooved, from Korea; Preliminary Results of Administrative Review*, 54 FR 7577 (Feb. 22, 1989), in *Malleable Iron Pipe Fittings, Other than Grooved, from Korea; Final Results of Administrative Review*, 54 FR 13090 (Mar. 30, 1989), and in *Malleable Iron Pipe Fittings, Other than Grooved, from Taiwan; Preliminary Results of Administrative Review*, 54 FR 38713 (Sept. 20, 1989).

Respondent argues that the Department applied BIA correctly in the preliminary results, and that petitioner misrepresents the decision in *Krupp Stahl*. Respondent contends that, while *Krupp Stahl* allowed the Department to use a preliminary margin from the LTFV investigation, which adopted the petition rates, the court did not hold that a margin alleged in a petition can be used over a published margin for a particular company.

Respondent also argues that the courts have held, in *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (1990), that the purpose of BIA is "to determine current margins as accurately as possible", and that the Department may not use BIA in a punitive manner. Respondent claims that using rates from the petition would be less accurate than using the rates calculated by the Department in the LTFV investigation.

Respondent argues that the methodology suggested by petitioner for adjusting the margin for changes in currency values would result in an inaccurate margin because the rates used in the ITC report cited in petitioner's case brief use real exchange rates instead of nominal exchange rates. Respondent argues that petitioner has not provided any compelling argument

why real exchange rates should be used instead of nominal exchange rates.

Respondent also states that, in the precedent cited by petitioner, the Department assumed that prices in the United States and the foreign market remained constant. Respondent alleges that prices have not been constant in the United States, and, therefore, such an assumption cannot be made in this case.

Department's Position: We agree with petitioner. Tupy was the only company investigated in the antidumping duty LTFV investigation on malleable cast iron pipe fittings from Brazil. Because this is the first administrative review of this order, Tupy's final LTFV rate of 5.64 percent is the only rate for any company from any segment of the proceeding. If we were to follow our regular practice for assigning uncooperative BIA rates, Tupy would benefit by receiving its own LTFV rate in this and any subsequent review in which it chooses not to respond to our requests for information. This is contrary to the Department's aim in using BIA. As the Court of Appeals for the Federal Circuit has affirmed, "the ITA may use BIA as an investigative tool, which [ITA] may wield as an informal club over recalcitrant parties or persons" to induce cooperation with our requests for information. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 at 1191 (1990) (*Rhone Poulenc II*). Therefore, we find that there is justification in this case to depart from past Department practice in determining uncooperative BIA.

By refusing to provide a questionnaire response, as indicated in its letter to the Department dated October 31, 1994, Tupy leaves unanswered a legitimate question as to whether the firm dumped subject merchandise during the period of review to a greater or lesser extent than in the past. In not responding to our requests for information, Tupy could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate. Such a capped BIA rate would allow Tupy to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences. With such a capped rate, Tupy would no longer have an incentive to participate in an administrative review which would determine the extent to which Tupy is actually dumping subject merchandise in the United States.

In *Rhone Poulenc, Inc. v. United States*, 710 F. Supp. 341 (*Rhone Poulenc I*) at 347, the Court of International Trade (CIT) ruled that a respondent should not be allowed to control the results of the review by providing

partial information (or, as in this case, no information) or otherwise hindering the review. Citing *Rhone Poulenc I*, the CIT has also determined that "to use the rate demanded by [the respondent] might have the effect of 'plac[ing] control of the investigation in the hands of uncooperative respondents who could force Commerce to use possibly unrepresentative information most beneficial for them.'" See *Krupp Stahl*, 822 F. Supp. at 793. Contrary to Tupy's claim that the function of BIA is solely to find the most accurate rate possible, in *Krupp Stahl*, the CIT characterizes one of the functions of BIA as "cooperation-inducing." *Id.*

We also find incorrect Tupy's assertion that the *Krupp Stahl* decision upholds only the authority to use a preliminary margin based on petition rates as BIA, and not the authority to use the petition rates themselves. Respondent correctly states that, in *Krupp Stahl*, the petition-based information used as BIA was derived from the LTFV preliminary investigation. See 822 F. Supp. at 796. Resort to the preliminary determination for evidence of petition-based BIA was necessary in that case because the petition was not on the administrative record of the review under consideration in *Krupp Stahl*, and each administrative determination must be supported by sufficient evidence on the record. See 822 F. Supp. at 795.

Contrary to Tupy's assertion, the CIT's decision in *Krupp Stahl* did not limit the use of petition-based information in administrative reviews to cases where margins in the preliminary determinations were petition-based. Rather, in *Krupp Stahl*, the CIT upheld our interpretation that the use of petition-based information as BIA in an administrative review was not contrary to the statute, and that it did not "contravene any clearly discernable legislative intent." See *Krupp Stahl*, 822 F. Supp. at 794. Because Tupy has failed to cooperate in this administrative review, and a BIA rate capped at Tupy's LTFV rate would not induce Tupy's cooperation in this or any future review, we have determined that it is appropriate to use petition-based information as BIA in this administrative review.

We have also determined that the use of petition-based information as BIA is more appropriate than adjusting the LTFV rate for currency appreciation. Though the latter methodology may be appropriate in other circumstances, in this case we have rates from the petition, which, after correction, were found to be acceptable by the Department as a basis for initiating the

LTFV investigation. Further, there is limited record evidence available for determining an adjustment to the LTFV margin for currency fluctuations, including whether we should use real or nominal exchange rates for such a calculation. Thus, we conclude that the use of petition-based rates for BIA is a better approach in this administrative review.

In order to use petition-based information as BIA for Tupy in this administrative review, the Department must include the petition in the administrative record of this review. Therefore, with the permission of petitioner, and pursuant to our regulations at 19 CFR 353.3, we have obtained a copy of the petition from the administrative record of the LTFV investigation, and included it in the record of this administrative review.

We have determined that the simple average of the rates from the petition is a more appropriate standard for BIA in this case. The petition rates, as adjusted by the Department for the LTFV initiation notice, are 8.8, 14.46, 53.6, and 61.7 percent. See *Malleable Cast Iron Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation*, 50 FR 34730. The simple average of these rates is 34.64 percent.

Final Results of Review

We determine the margin for this administrative review to be:

Producer/exporter	Margin
Industria de Fundicao Tupy S.A	34.64

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 5.64 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the

final results of the next administrative review.

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

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22, 353.25.

Dated: August 7, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-20030 Filed 8-11-95; 8:45 am]

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Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 90-4A006.

SUMMARY: On June 26, 1995, the Department of Commerce issued an amendment to the Export Trade Certificate of Review granted to the Forging Industry Association ("FIA"). Notice of the original Certificate was published in the **Federal Register** on July 9, 1990 (55 FR 28801, July 13, 1990).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in

the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The Forging Industry Association's ("FIA") original Certificate was issued on July 9, 1990 (55 FR 28801, July 13, 1990). Previous amendments to the Certificate were issued on April 30, 1991 (56 FR 21128, May 7, 1991), May 29, 1992 (57 FR 24022, June 5, 1992) and on April 1, 1994 (59 FR 16619, April 7, 1994).

The Amendment

1. Added the following company as a "Member" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): National Forge Company, Irvine, Pennsylvania;

2. Deleted the following six companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Columus McKinnon Corporation, Amherst, New York; Cooper tools-Brewer-Tichener/Merrill, Cortland, New York; Kervick Enterprises, Inc, Worcester, Massachusetts; FMC Corporation, Anniston, Alabama; McWilliams Forge Company, Inc., Rockaway, New Jersey; and Union Forging Co., Endicott, New York.

3. Reflected that Cameron Forge Company, Cypress, Texas is now a division of Wyman-Gordon Company, Worcester, Massachusetts. Since Wyman-Gordon Company is a current member, Cameron Forge Company was deleted as a "Member".

4. Reflected a change in the names of the following current Members: Airfoil Forging Textron, Inc., Cleveland, Ohio is now Turbine Engine Components, Textron (a subsidiary of Textron, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: August 8, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company
Affairs.

[FR Doc. 95-19976 Filed 8-11-95; 8:45 am]

BILLING CODE 3510-D-R-P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review, Application No. 95-5A007.

SUMMARY: On August 3, 1995, the Department of Commerce issued an amendment to the Export Trade Certificate of Review granted to the U.S. Surimi Commission ("USSC"). Notice of the original Certificate was published in the **Federal Register** on August 22, 1990 (55 FR 35445).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The U.S. Surimi Commission's ("USSC") original Certificate was issued on August 22, 1990 (55 FR 35445, August 30, 1990). Previous amendments to the Certificate were issued on December 12, 1990 (55 FR 53031, December 26, 1990); June 11, 1991 (56 FR 27946, June 18, 1991); May 22, 1992 (57 FR 23078, June 1, 1992); and August 12, 1993 (58 FR 44504 August 23, 1993).

The Amendment

1. Added the following companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Alaska Trawl Fisheries, Inc., Edmonds, Washington (controlling entity: Daerim Corporation, Seoul, Korea); and Emerald Seafoods, N.W., Limited Partnership.

2. Deleted three companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Pacific Orion Seafoods, Inc., Arctic Alaska Seafoods, Inc., and Golden Alaska Seafoods, Inc.