

(xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute ("API") API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (e.g., polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;<sup>74</sup> (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (e.g., outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20)  
1.315 inch O.D. and 0.047 inch wall thickness (gage 18)  
1.315 inch O.D. and 0.055 inch wall thickness (gage 17)  
1.315 inch O.D. and 0.065 inch wall thickness (gage 16)  
1.315 inch O.D. and 0.072 inch wall thickness (gage 15)  
1.315 inch O.D. and 0.083 inch wall thickness (gage 14)  
1.315 inch O.D. and 0.095 inch wall thickness (gage 13)  
1.660 inch O.D. and 0.047 inch wall

thickness (gage 18)  
1.660 inch O.D. and 0.055 inch wall thickness (gage 17)  
1.660 inch O.D. and 0.065 inch wall thickness (gage 16)  
1.660 inch O.D. and 0.072 inch wall thickness (gage 15)  
1.660 inch O.D. and 0.083 inch wall thickness (gage 14)  
1.660 inch O.D. and 0.095 inch wall thickness (gage 13)  
1.660 inch O.D. and 0.109 inch wall thickness (gage 12)  
1.900 inch O.D. and 0.047 inch wall thickness (gage 18)  
1.900 inch O.D. and 0.055 inch wall thickness (gage 17)  
1.900 inch O.D. and 0.065 inch wall thickness (gage 16)  
1.900 inch O.D. and 0.072 inch wall thickness (gage 15)  
1.900 inch O.D. and 0.095 inch wall thickness (gage 13)  
1.900 inch O.D. and 0.109 inch wall thickness (gage 12)  
2.375 inch O.D. and 0.047 inch wall thickness (gage 18)  
2.375 inch O.D. and 0.055 inch wall thickness (gage 17)  
2.375 inch O.D. and 0.065 inch wall thickness (gage 16)  
2.375 inch O.D. and 0.072 inch wall thickness (gage 15)  
2.375 inch O.D. and 0.095 inch wall thickness (gage 13)  
2.375 inch O.D. and 0.109 inch wall thickness (gage 12)  
2.375 inch O.D. and 0.120 inch wall thickness (gage 11)  
2.875 inch O.D. and 0.109 inch wall thickness (gage 12)  
2.875 inch O.D. and 0.134 inch wall thickness (gage 10)  
2.875 inch O.D. and 0.165 inch wall thickness (gage 8)  
3.500 inch O.D. and 0.109 inch wall thickness (gage 12)  
3.500 inch O.D. and 0.148 inch wall thickness (gage 9)  
3.500 inch O.D. and 0.165 inch wall thickness (gage 8)  
4.000 inch O.D. and 0.148 inch wall thickness (gage 9)  
4.000 inch O.D. and 0.165 inch wall thickness (gage 8)  
4.500 inch O.D. and 0.203 inch wall thickness (gage 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigation.

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-852]

#### Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Determination of Sales at Less Than Fair Value

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

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that circular welded carbon-quality steel pipe from India 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 Act). The estimated margin of sales at LTFV is listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

**DATES:** *Effective Date:* June 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Steve Bezirgianian and 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) 482-1131 and (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 26, 2011, the Department received petitions concerning imports of circular welded carbon-quality steel pipe (certain steel pipe) from India, the Sultanate of Oman (Oman), the United Arab Emirates (UAE), and the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of Allied Tube and Conduit, JMC Steel Group, Wheatland Tube Company, and United States Steel Corporation (collectively, Petitioners).<sup>1</sup>

On November 15, 2011, the Department initiated the antidumping duty investigations on certain steel pipe from India, Oman, the UAE, and Vietnam.<sup>2</sup>

We noted in the *Initiation Notice* that this investigation covers merchandise

<sup>1</sup> See Circular Welded Carbon-Quality Steel Pipe from India, Oman, the UAE, and Vietnam: Antidumping and Countervailing Duty Petitions, filed on October 26, 2011 (hereinafter, the Petitions).

<sup>2</sup> See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations, 76 FR 72164 (November 22, 2011) (*Initiation Notice*).

<sup>74</sup> Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a "kit." A "kit" is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

manufactured and/or exported by Zenith Steel Pipes and Industries Ltd., which had been excluded from an existing antidumping duty order covering welded steel pipe and tube from India.<sup>3</sup> In the *Initiation Notice*, we stated Petitioners had referred to Zenith Steel Pipes and Industries Ltd. and Zenith Birla (India) Limited interchangeably.<sup>4</sup> See *Initiation Notice* at 72168. Zenith Birla (India) Limited appeared to be the current name for what was previously known as Zenith Steel Pipes and Industries, Ltd., and we indicated we intended to issue questionnaires to both of these named entities. See *id.* Because these companies are the sole companies subject to this investigation, the Department has not invoked the exception under section 777A(c)(2) of the Act, and the Department issued its questionnaire to Zenith Steel Pipes and Industries Ltd. and Zenith Birla (India) Limited on November 22, 2011. Only Zenith Birla (India) Limited responded to our questionnaire (see “Use of Facts Otherwise Available” section, below), and nothing on the record of the investigation contradicts our original conclusion that Zenith Birla (India) Limited is the current name for the company formerly known as Zenith Steel Pipes and Industries, Ltd.<sup>5</sup>

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 the date of signature of the *Initiation Notice*. See *Initiation Notice*, 76 FR at 72164. We received comments from SeAH Steel Vina Corp. (SeAH VINA), a Vietnamese producer, on December 5, 2011, and we received rebuttal comments from petitioners Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube Company on December 14, 2011. After reviewing all comments, we have adopted the “Scope of Investigation” section of this notice, below. The Department also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire and indicated that in order to consider such comments, they should be submitted no later than December 9, 2012. See *Initiation Notice*, 76 FR at 72164–5. On December 9, 2011, we received comments from a UAE producer named Universal Tube and Plastics Industries, Ltd. and its U.S.

affiliate, Prime Metal Corporation USA. After reviewing all comments, we have adopted the product characteristics and hierarchy as explained in the preliminary determinations of concurrent antidumping investigations on certain steel pipe.

On December 16, 2011, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of certain steel pipe from India, Oman, the UAE, and Vietnam are materially injuring the U.S. industry, and the ITC notified the Department of its finding.<sup>6</sup>

On February 8, 2012, petitioners Allied Tube and Conduit and JMC Steel Group, filed an allegation of sales below cost with respect to Zenith Birla. Those petitioners supplemented that allegation in a submission made February 9, 2012. On February 21, 2012, the Department initiated a cost investigation with respect to Zenith Birla. See the February 21, 2012, memorandum from The Team to Richard Weible entitled “The Petitioners’ Allegation of Sales Below the Cost of Production for Zenith Birla (India), Ltd.”

On February 17, 2012, petitioner Wheatland Tube Corporation filed an allegation of targeted dumping by Zenith Birla. See the “Allegation of Targeted Dumping” section below.

On February 29, 2012, petitioners Allied Tube and Conduit and JMC Steel Group requested that the Department postpone its preliminary determination by 50 days. In accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days.<sup>7</sup>

#### Period of Investigation

The period of investigation is October 1, 2010, through September 30, 2011. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, October 2011. See 19 CFR 351.204(b)(1).

#### Scope of Investigation

The products covered by this investigation are circular welded carbon-quality steel pipe from India. For a full description of the scope of the investigation, as set forth in the *Initiation Notice* see the “Scope of the

Investigation” in Appendix I of this notice.

#### Scope Comments

As noted above, on December 5, 2011, SeAH VINA, a mandatory respondent in the concurrent AD and CVD investigations of certain steel pipe from Vietnam, filed comments arguing that the treatment of double and triple stenciled pipe in the scope of these investigations differs from previous treatment of these products under other orders on circular welded pipe. Specifically, SeAH VINA claims that the Brazilian, Korean, and Mexican orders on these products exclude “Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil and gas pipelines \* \* \*” See SeAH VINA comments (December 5, 2011); see also *Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order*, 76 FR 66899, 66900 (Oct. 28, 2011). According to SeAH VINA: (i) If the term “class or kind of merchandise” has meaning, it cannot have a different meaning when applied to the same products in two different cases; and (ii) the distinction between standard and line pipe reflected in the Brazil, Korean and Mexican orders derives from customs classifications administered by U.S. Customs and Border Protection (CBP) and, thus, is more administrable.

On December 14, 2011, Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube (collectively, Certain Petitioners), responded to SeAH VINA’s comments stating that the scope as it appeared in the *Initiation Notice* reflected Petitioners’ intended coverage. Certain Petitioners contend that pipe that is multi-stenciled to both line pipe and standard pipe specifications and meets the physical characteristics listed in the scope (*i.e.*, is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish) is ordinarily used in standard pipe applications. Certain Petitioners state that, in recent years, the Department has rejected end-use scope classifications, preferring instead to rely on physical characteristics to define coverage, and the scope of these investigations has been written accordingly. Therefore, Certain Petitioners ask the Department to reject SeAH VINA’s proposed scope modification.

<sup>3</sup> See *Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986).

<sup>4</sup> See *Initiation Notice* at 72168.

<sup>5</sup> Because the party filing responses referred to itself as Zenith Birla (India) Limited, henceforward we refer to the respondent as “Zenith Birla.”

<sup>6</sup> See *Circular Welded Carbon-Quality Steel Pipe From India, Oman, the United Arab Emirates, and Vietnam*, Investigation Nos. 701–TA–482–485 and 731–TA–1191–1194 (Preliminary), 76 FR 78313 (December 16, 2011).

<sup>7</sup> See *Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 77 FR 15718 (March 16, 2012).

We agree with Certain Petitioners that the Department seeks to define the scopes of its proceedings based on the physical characteristics of the merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, we disagree with SeAH VINA's contention that once a "class or kind of merchandise" has been established that the same scope description must apply across all proceedings involving the product. For example, as the Department has gained experience in administering antidumping duty and countervailing duty orders, it has shifted away from end use classifications to scopes defined by the physical characteristics. *Id.* Thus, proceedings initiated on a given product many years ago may have end use classifications while more recent proceedings on the product would not. *Compare, e.g., Countervailing Duty Order: Oil Country Tubular Goods from Canada*, 51 FR 21783 (June 16, 1986) (describing subject merchandise as being "intended for use in drilling for oil and gas") with *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010) (describing the subject merchandise in terms of physical characteristics without regard to use or intended use). Finally, Certain Petitioners have indicated the domestic industry's intent to include multi-stenciled products that otherwise meet the physical characteristics set out in the scope. Therefore, the Department is not adopting SeAH VINA's proposed modification of the scope.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of facts otherwise available for an adverse inference is appropriate for the preliminary determination with respect to Zenith Birla.

##### A. Use of Facts Available

Section 776(a)(2) of the 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 or in the form and 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 section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that where the Department determines a response to a request for information does not comply with the request, the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the 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; (5) the information can be used without undue difficulties.

The Department stated the following in a letter to Zenith Birla dated February 6, 2012: "{t}he questionnaire responses submitted by Zenith Birla (India) Ltd. have been in some instances untimely filed, and submissions made have contained deficiencies. These deficiencies have included failure to explicitly justify requested proprietary treatment for certain information, insufficient public summaries of business proprietary information, and/or failure to certify the accuracy and service of certain submissions. In addition, many of the specific requests for information have gone unanswered, and in some instances the answers provided have been contradictory. The number and nature of these and other problems is so pervasive as to reflect a persistent pattern of obstruction of, and non-cooperation with, this investigation." We noted "that further deficiencies of this nature may result in the rejection of such responses in their entirety, and may warrant the use of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act."

Zenith Birla did not respond in a timely manner to the Department's supplemental questionnaire dated

February 21, 2012. In response to requests from Zenith Birla, the Department extended the original deadline for response to that questionnaire from March 6, 2012, to March 12, 2012, and from the latter to March 15, 2012. On March 15, 2012, Zenith Birla requested an additional deadline extension, to March 19, 2012, and the Department extended the deadline until 12:00 noon on March 16, 2012. Shortly before that deadline on March 16, 2012, Zenith Birla submitted a letter indicating it would submit its response in three parts: One part on time, one part after the deadline on March 16, 2012, and one part by 9:00 a.m. on March 19, 2012. This letter requested that the deadlines for each of the latter two parts be extended by the Department to conform to this schedule. The Department did not extend the deadline, and none of Zenith Birla's response was filed on time. On March 19, 2012, the Department issued a letter to Zenith Birla indicating the Department was rejecting the untimely response and deleting it from the record. On March 19, 2012, the Department noted in a memorandum to the file that the documents in question should be rejected and deleted from the record. On April 9, 2012, Zenith Birla submitted a letter claiming it was responding to the best of its ability, that the Department could not impose adverse inferences unless it could show the respondent failed to act to the best of its ability, and that the Department could not cease the questionnaire process unless it could demonstrate it lacked the time to complete the investigation within statutory deadlines.

In this case, Zenith Birla did not respond to our request for information in a timely manner, withheld information the Department requested, and significantly impeded the proceeding. Zenith Birla's involvement in this investigation, when viewed in conjunction with the requirements of sections 782(c) and (d) of the Act and the instructions clearly articulated in the Department's questionnaire, show that Zenith Birla was afforded sufficient opportunities to provide the requested information, and, therefore, the Department was under no obligation to provide additional opportunities for Zenith Birla to provide this information after the multiple extensions already granted. Because Zenith Birla did not provide the requested information by the established deadline, its submissions do not satisfy the criteria of section 782(e) of the Act. Accordingly, pursuant to section 776(a)(2) of the Act, we are relying upon facts otherwise

available for Zenith Birla's antidumping duty margin.

#### *B. Application of Adverse Inferences for Facts Available*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>8</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA), explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>9</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. 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 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element."). It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation. See *Essar Steel Ltd. v. United States*, 2012 U.S. App. LEXIS 8621 at \*18 (Fed. Cir. Apr. 27, 2012) (*Essar*) ("Because Commerce lacks subpoena power, Commerce's ability to apply adverse facts is an important one. The purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")

We provided Zenith Birla with notice informing it of the consequences of failure to respond properly to our

antidumping questionnaires, including failure to respond in a timely manner. Nonetheless, Zenith Birla failed to provide a timely response to the February 21, 2012, supplemental questionnaire, despite the Department's multiple extensions of the deadline for filing the response. See *Essar* at \*19 ("Without the ability to enforce full compliance with its questions, Commerce runs the risk of gamesmanship and lack of finality in its investigations."). This failure indicates that Zenith Birla has not cooperated with our requests for information. See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."). Moreover, "{i}t is {respondent's} burden to create an accurate record during Commerce's investigation." See *Essar* at \*23 (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993)). Zenith Birla's failures have precluded the Department from performing the necessary analysis and verification of Zenith Birla's questionnaire responses required by section 782(i)(1) of the Act.

For the reasons discussed, the Department has preliminarily determined that Zenith Birla has failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted, pursuant to section 776(b) of the Act.<sup>10</sup>

#### *C. 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 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) and the SAA at 868-870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, 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.<sup>11</sup> The rates in the petition range from 22.88 percent to 48.43 percent. See *Initiation Notice* at 72168.

Section 776(c) of the Act provides that, when the Department relies on secondary information, rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under Section 751 concerning the subject merchandise." See the SAA at 870. The SAA provides that to "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* 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); see also the SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>12</sup>

<sup>11</sup> 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)).

<sup>12</sup> See *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*

<sup>8</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India*, 70 FR 54023, 54025-26 (September 13, 2005), and *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).

<sup>9</sup> See SAA at 870; and, e.g., *Certain Polyester Staple Fiber From Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

<sup>10</sup> See, e.g., *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Poland, Indonesia, and Ukraine*, 66 FR 8343, 8346 (January 30, 2001) (unchanged in *Notice of Final Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Indonesia, Poland and Ukraine*, 66 FR 18752, 18753 (April 11, 2001)) *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR at 42986 (July 12, 2000) (where the Department applied total adverse facts available (AFA) where respondents failed to respond to questionnaires in a timely manner).

During our pre-initiation analysis, we examined evidence supporting the calculations in the Petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the Petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value (NV) in the Petition, and the calculations used to derive the alleged margins, thereby corroborating key elements of the export price and NV calculations and establishing the basis for the estimated margins identified in the *Initiation Notice*. Petitioners' methodology for calculating the export price and NV in the Petition is discussed in the *Initiation Notice*. See *Initiation Notice* at 72166–68. These calculations appear reasonable and no information on the record provides a basis for challenging the appropriateness of those estimated margins. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the margins in the petition and in the

*Initiation Notice* are reliable for the purposes of this investigation. Regarding the relevance of the rates in the petition and the *Initiation Notice* to Zenith Birla, the courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry. See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999). Because the petition rates are derived from the same industry and are based either on information related to Zenith Birla itself or on aggregate data involving the same industry, we have determined the petition rates to be relevant. In corroborating the petition rates, we examined the prices submitted by Zenith Birla in its questionnaire response. While we note these data cannot be relied upon to calculate a margin for the reasons discussed in detail above, we note that Zenith Birla's own reported prices corroborate the prices used in the petition. See the May 23, 2012, analysis memorandum from Steve Bezirgianian through Robert James to the File. Consistent with our practice of using the highest rate when AFA is

warranted, we are using the higher of the petition and *Initiation Notice* rates, 48.43 percent, as the rate for Zenith Birla.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of certain steel pipe from India manufactured and/or exported by Zenith Birla 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 margin, as indicated below, as follows: (1) The rate for Zenith Birla 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 manufacturer is Zenith Birla, the rate will be the rate established for Zenith Birla. These suspension-of-liquidation instructions will remain in effect until further notice. Note that no “all others” deposit rate is required, because Zenith Birla is the only manufacturer covered by the investigation.

Manufacturer/exporter	Weighted-average margin (percent)
Zenith Birla (India) Limited (previously known as Zenith Steel Pipes and Industries Ltd.) .....	48.43

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain steel pipe from India, or sales (or the likelihood of sales) for importation, of the certain steel pipe within 45 days of 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 thirty days after the publication of this preliminary determination. 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). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. See 19 CFR 351.309(c)(2). 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 Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case 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 deadline for filing a rebuttal brief. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. See 19 CFR 351.310(d).

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

Dated: May 23, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

### Scope of the India AD Investigation

At the time of the filing of the petition for this case, there was an existing antidumping duty order on welded steel pipe and tube From India. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986). Therefore, the scope of this investigation covers merchandise manufactured and/or exported by Zenith Steel Pipes and Industries Ltd., and any successors-in-interest to that company, which is the only company excluded from the 1986 order known to exist.

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter ("O.D.") not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (e.g., black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., American Society for Testing and Materials International ("ASTM"), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term "carbon quality" includes products in which: (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;
- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium;
- (xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American

Petroleum Institute ("API") API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (e.g., polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;<sup>13</sup> (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (e.g., outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

- 1.315 inch O.D. and 0.035 inch wall thickness (page 20)
- 1.315 inch O.D. and 0.047 inch wall thickness (page 18)
- 1.315 inch O.D. and 0.055 inch wall thickness (page 17)
- 1.315 inch O.D. and 0.065 inch wall thickness (page 16)
- 1.315 inch O.D. and 0.072 inch wall thickness (page 15)
- 1.315 inch O.D. and 0.083 inch wall thickness (page 14)
- 1.315 inch O.D. and 0.095 inch wall thickness (page 13)
- 1.660 inch O.D. and 0.047 inch wall thickness (page 18)
- 1.660 inch O.D. and 0.055 inch wall thickness (page 17)
- 1.660 inch O.D. and 0.065 inch wall thickness (page 16)
- 1.660 inch O.D. and 0.072 inch wall thickness (page 15)
- 1.660 inch O.D. and 0.083 inch wall thickness (page 14)
- 1.660 inch O.D. and 0.095 inch wall thickness (page 13)
- 1.660 inch O.D. and 0.109 inch wall thickness (page 12)
- 1.900 inch O.D. and 0.047 inch wall thickness (page 18)
- 1.900 inch O.D. and 0.055 inch wall thickness (page 17)
- 1.900 inch O.D. and 0.065 inch wall thickness (page 16)
- 1.900 inch O.D. and 0.072 inch wall thickness (page 15)

<sup>13</sup> Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a "kit." A "kit" is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

- 1.900 inch O.D. and 0.095 inch wall thickness (page 13)
- 1.900 inch O.D. and 0.109 inch wall thickness (page 12)
- 2.375 inch O.D. and 0.047 inch wall thickness (page 18)
- 2.375 inch O.D. and 0.055 inch wall thickness (page 17)
- 2.375 inch O.D. and 0.065 inch wall thickness (page 16)
- 2.375 inch O.D. and 0.072 inch wall thickness (page 15)
- 2.375 inch O.D. and 0.095 inch wall thickness (page 13)
- 2.375 inch O.D. and 0.109 inch wall thickness (page 12)
- 2.375 inch O.D. and 0.120 inch wall thickness (page 11)
- 2.875 inch O.D. and 0.109 inch wall thickness (page 12)
- 2.875 inch O.D. and 0.134 inch wall thickness (page 10)
- 2.875 inch O.D. and 0.165 inch wall thickness (page 8)
- 3.500 inch O.D. and 0.109 inch wall thickness (page 12)
- 3.500 inch O.D. and 0.148 inch wall thickness (page 9)
- 3.500 inch O.D. and 0.165 inch wall thickness (page 8)
- 4.000 inch O.D. and 0.148 inch wall thickness (page 9)
- 4.000 inch O.D. and 0.165 inch wall thickness (page 8)
- 4.500 inch O.D. and 0.203 inch wall thickness (page 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigation.

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**BILLING CODE 3510-DS-9**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

**DATES:** *Effective Date:* June 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482-3338.