

subject merchandise. However, the sales of certain OCTG products discovered at verification indicate a viable home market, thereby making the use of a third country market, instead of the home market as a basis for determining foreign market value, questionable. Finally, in addition to the significant omissions, the charges and adjustments reported by TR were replete with discrepancies and errors, making it impossible for the Department to conduct a complete verification of TR's responses.

In order to determine whether sales are made in the United States at less than fair value, it is critical that the Department be provided with accurate and reliable sales information to be used in its analysis. Because of the inaccuracies discovered in TR's submitted information, the Department was unable to verify that information, as required by section 776(1) of the Act. That section of the Act provides that, if the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted, it shall use BIA as the basis for its determination. Consequently, we have based this determination on BIA.

In determining what rate to use as BIA, the Department follows a two-tiered BIA methodology, whereby the Department may impose the most adverse rate upon those respondents who refuse to cooperate or otherwise impede the proceeding, or assign a lower rate for those respondents who have cooperated in an investigation. When a company is determined to be uncooperative, it has been the Department's practice to apply the highest rate alleged in the petition as BIA. When a company is determined to be cooperative, it has been the Department's practice to apply as BIA the higher of: (1) The average of the margins in the petition; or (2) the calculated margin for another firm for the same class or kind of merchandise from the same country. This methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co. v. the United States*, Slip Op. 93-1049 (Fed Cir. June 22, 1993); see also *Krupp Stahl AG. et al v. the United States*, Slip Op. 93-84 (CIT May 26, 1993).)

In spite of the numerous errors in its response, we have determined that TR was cooperative during this proceeding and have assigned to it a cooperative BIA margin of 11.95 percent, based on the average of the margins alleged in the petition. For further information on the

use of a cooperative BIA margin, see the "DOC Position" section of this notice.

Verification

As provided in section 776(b) of the Act, we attempted to verify TR's information for purposes of the final determination. However, given the significant discrepancies encountered at verification, the use of the respondent's information in the final determination was not possible.

Interested Party Comments

Comment 1—Use of Total Uncooperative BIA

The petitioners maintain that because of the gravity of the mistakes made by TR, the Department should assign to TR an uncooperative BIA margin of 18.6 percent. They point to the verification report which shows that TR failed to report the actual price as invoiced to the first unrelated U.S. customer, and note that many other discrepancies and omissions were found by the Department at verification.

TR maintains that the record clearly reflects that it has cooperated fully with the Department in this investigation, submitting hundreds of pages of responses to the Department questionnaires and supplemental questionnaires within the time allowed. According to the respondent, due to the tight time constraints of antidumping investigations, a number of errors have been made, many of which came to light in preparing documentation for verification. TR maintains that it promptly and fully disclosed the errors to the Department as soon as the respondent became aware of such errors.

Moreover, TR contends that only following receipt of the verification outline on March 7, 1995, did TR's officials, in the course of preparing the payment documentation for verification, see the need to refer to the actual invoices re-issued by TR America, inclusive of the inland freight. TR maintains that, even if it had realized the need earlier to report to the Department the actual invoiced prices inclusive of the U.S. inland freight expenses, it would not have changed the way in which the sales listing was ultimately prepared. TR states that, in order to be able to provide a timely response to the Department's questionnaire, it was necessary to report sales data as it was reflected in TR's computer in Spain. Furthermore, TR argues that it was appropriate not to report sales of class "C" OCTG and couplings stock because these products are not covered in the scope of the

investigation. Finally, TR claims that the errors and discrepancies discovered for the remaining sales data are insignificant and offset each other. Therefore, the respondent requests that the Department use the information gathered at verification as a basis for TR's margin calculation in the final determination.

DOC Position

As discussed in the BIA section of this notice, the discrepancies found in TR's response render it unusable. The Department, however, disagrees with the petitioners on assigning TR a non-cooperative BIA margin. Although much of the information found to be deficient could not be remedied at verification, TR made a good faith effort by responding to the Department's questionnaire, by submitting a verifiable cost of production questionnaire response, and by attempting to cooperate at the sales verification. We also believe that the inaccuracy of TR's responses is the result of inadvertent errors in its reporting, and poor verification preparation, not a lack of cooperation on the part of the respondent. Thus, we believe that assigning TR a cooperative BIA margin is appropriate.

Because this final determination is based on BIA, all other comments are moot.

Suspension of Liquidation

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of OCTG from Spain that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Tubos Reunidos S.A	11.95
All Others	11.95

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist,