1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: August 31, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803]

Titanium Sponge from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review and Partial Revocation

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

ACTION: Notice of preliminary results of antidumping duty administrative review and partial revocation.

SUMMARY: In response to requests from AVISMA Titanium-Magnesium Works; the affiliated companies Interlink Metals, Inc., and Interlink Metals & Chemicals, S.A.; TMC Trading International Ltd.; and Titanium Metals Corporation, the Department of Commerce is conducting an administrative review of the antidumping finding on titanium sponge from the Russian Federation. This notice of preliminary results covers the period August 1, 1996 through July 31, 1997. This review covers one manufacturer/exporter, AVISMA Titanium-Magnesium Works, and two trading companies, TMC Trading International Ltd. and, collectively as one company, Interlink Metals, Inc., and Interlink Metals & Chemicals, S.A.

We have preliminarily determined that no dumping margins apply during this review period. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to liquidate entries during the period of review without regard to dumping duties. Furthermore, if these preliminary results are adopted in our final results of review, this will be the Interlink entities' third consecutive review with no dumping margins. Therefore, in the final results we will revoke this finding with respect to Interlink. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel or Mark Manning, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5849 and 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Background

The Department of Commerce (the Department) published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (U.S.S.R.) on August 28, 1968 (33 FR 12138). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to each of the former republics of the U.S.S.R. (57 FR 36070, August 12, 1992).

On August 26, 1997, AVISMA Titanium-Magnesium Works (AVISMA) and Interlink Metals & Chemicals, S.A. and Interlink Metals, Inc. (collectively Interlink) requested that the Department conduct an administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia) for one manufacturer/exporter, AVISMA, and one trading company, Interlink, covering the period August 1, 1996 through July 31, 1997. On August 27, 1997, Titanium Metals Corporation (TIMET) requested that the Department conduct an administrative review for the trading companies, Interlink and TMC Trading International, Ltd. (TMC). On August 28, 1997, TMC requested that the Department conduct an administrative review of its U.S. sales. The Department published a notice of initiation of the review on September 25, 1997 (62 FR 50292). Due to the complexity of the legal and methodological issues presented by this review, the Department postponed the date of the preliminary results of review by sixty days on February 10, 1998 (63 FR 6721). The Department published a second sixty day postponement of preliminary results of review on April 16, 1998 (63 FR 18885). The Department is conducting this administrative review in accordance with section 751 of the Act.

On August 13, 1998, the International Trade Commission (ITC) published in the **Federal Register** its determination that revocation of the findings covering titanium sponge imports from the Republic of Kazakhstan (Kazakhstan), Russia, and Ukraine and the antidumping duty order covering imports of titanium sponge from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States. Due to this determination the Department has revoked the findings covering titanium sponge imports from Kazakhstan, Russia, and Ukraine and the antidumping duty order covering titanium sponge imports from Japan. This revocation is effective as of August 13, 1998. *See Notice of Revocation of Antidumping Findings and Antidumping Duty Order and Termination of Five-Year (''Sunset'') Reviews: Titanium Sponge from Kazakhstan, Russia, Ukraine, and Japan,* (63 FR 46215, August 31, 1998).

Scope of the Review

The product covered by this administrative review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

Separate Rates

During the period of review (POR), AVISMA made direct sales of subject merchandise to the U.S. market that were entered for consumption. Due to these direct sales, AVISMA has requested a separate, company-specific rate. The claimed ownership of AVISMA during the POR is that of a publicly owned joint stock company, where 100 percent of the shares are owned by private individuals and private companies. AVISMA asserted that the state owned zero percent of its shares.

To establish whether a firm is sufficiently independent from

government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. Since the Department did not verify the information submitted by AVISMA to the record of this proceeding, we must rely upon the information provided by AVISMA in its questionnaire responses in order to determine whether there is an absence of either *de jure* or *de facto* governmental control.

1. Absence of De Jure Control

An individual company may be considered for a separate rate if it meets the following *de jure* criteria: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies. AVISMA has placed on the administrative record a number of documents demonstrating absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the government of Russia, describing the deregulation of Russian enterprises as well as the deregulation of the Russian export trade. Specifically, these documents include the President of the Russian Federation's Decree Number 721, that states ''a joint stock company from the moment of its registration is out of the control of Ministries, State and Local administrative organs and authorities.'' In addition, AVISMA has placed on the record Article 49 of the Russian Federation's Civil Code, which states ''Commercial organizations * * * can have civil rights and civil obligation necessary for any kind of activities, not prohibited by the regulation.'' ''Commercial organization'' is defined to be an organization, whose activities are aimed at gaining profit (Russian Federation Civil Code Article 50). *See* AVISMA's questionnaire response dated November 26, 1997. Furthermore, AVISMA claims that there are no licenses issued by any government agency to AVISMA with regard to any aspect of AVISMA's production or sales activity. Based on this information, we have concluded that there was a *de jure* absence of governmental control over AVISMA.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) it retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In its questionnaire responses, AVISMA asserted the following: (1) it establishes its own export price; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it selects its own management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has no restrictions on the use of its retained foreign currency earnings. In support of its claim that it is free of *de facto* government control, AVISMA provided sample documents to one of its direct sales to the United States. These documents include the sales contract, currency control passport, commercial invoice, quality control shipping document, and customs declaration. In addition, AVISMA provided its audited financial statements from the two most recent fiscal years (1995 and 1996) as well as the income statements for the first and second quarters of 1997. This information supports a finding that, during the POR, there was a *de facto* absence of governmental control of export functions. Therefore, we have concluded that AVISMA is entitled to a separate rate.

The Russia-Wide Rate

In past reviews of this finding, the Department has examined several export companies not included in the instant review. One of these exporters, Cometals Inc., had shipments that were reviewed and received a positive margin. *See Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 48601 (September 16, 1997) (*Titanium Sponge 1996*). Therefore, we conclude that not all exporters of titanium sponge from Russia are included in the instant review. Accordingly, we are applying a single antidumping deposit rate—the Russia-wide rate—to all manufacturers/exporters of titanium sponge from the Russian Federation that have not received a company-specific rate in the current or prior administrative reviews.

Intent To Revoke

On August 26, 1997, Interlink submitted a request, in accordance with Section 351.222(b), that the Department revoke the finding covering titanium sponge from the Russian Federation with respect to its sales of this merchandise. In accordance with Section 351.222(b)(iii), Interlink submitted on December 10, 1997, a certification that it had not sold the subject merchandise at less than normal value for a three-year period, including this review period, and would not do so in the future.

We preliminarily determine that Interlink sold titanium sponge from Russia at not less than normal value during this review period. Based on Interlink's three consecutive years of zero margins and the absence of evidence to the contrary, we preliminarily determine that it is not likely that Interlink will in the future sell titanium sponge at less than normal value. Therefore, if these preliminary findings are affirmed in our final results, we intend to revoke the order on titanium sponge from Russia with respect to Interlink.

In the last two administrative reviews, we determined that Interlink did not sell titanium sponge at less than fair value. *See Titanium Sponge 1996* and *Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review,* 61 FR 58525 (November 15, 1996). Additionally, as discussed below, we have preliminarily determined that Interlink has not sold titanium sponge at less than fair value during the period covered by this review. Consequently, we preliminarily determine that because Interlink has three consecutive years of zero or *de minimis* margins on titanium sponge, Interlink is eligible for revocation of the finding on titanium sponge from Russia under Section 351.222(b).

United States Price

AVISMA

We calculated U.S. price (USP) for AVISMA's sales to unaffiliated purchasers in the United States based on export price (EP), as defined in section 772(a) of the Act. For the date of sale, we used the sales invoice date.

We made deductions, where appropriate, for inland freight, brokerage and handling, international freight, marine insurance, and Russian export charges. AVISMA did not claim any other adjustments to USP, nor were any other adjustments allowed.

Interlink and TMC

For purposes of this review, we assigned a separate rate for Interlink and TMC (which are located in market-economy countries) because AVISMA, at the time of sale to these entities, did not have knowledge of the ultimate destination of the merchandise. We calculated USP for TMC based on EP. Interlink reported that its U.S. sales were EP sales that were made to unaffiliated U.S. customers prior to importation and customarily did not enter into the inventory of Interlink Metals & Chemicals S.A.'s U.S. affiliate. When U.S. sales are made in this manner, our practice is to examine several criteria in order to determine whether the sales are EP sales. Those criteria are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions is not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as constructed export price (CEP) sales. *See, e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13,170 (March 18, 1998) and *Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32,820 (June 16, 1998). The record shows that during the POR Interlink Metals, Inc., Interlink's U.S. operation, was responsible for the sale of titanium sponge to customers and that sales activities were generally performed in the United States. Thus, we have preliminarily determined that Interlink Metals, Inc. acted as more than a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Therefore, we based USP on CEP, as defined in section 772(b) of the Act. For date of sale, we used the sales invoice date for both TMC and Interlink. We excluded those sales made to the United States which the respondents identified as having entered the United States under temporary importation bond (TIB). We are currently confirming the information provided by respondents regarding TIB entries through Customs and National Census Bureau data.

In calculating USP for TMC and Interlink, we made deductions, where appropriate, for ocean freight, warehouse expenses, insurance, brokerage and handling, inland freight, and U.S. duty and terminal handling charges. Additionally, in accordance with section 772 (d) of the Act and the Department's practice in non-market economy (NME) cases involving CEP sales, in calculating USP for Interlink we made deductions for U.S. credit and indirect selling expenses and the profit allocated to these U.S. expenses (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* 61 FR 19026 (April 30, 1996)). TMC and Interlink did not claim any other adjustments to USP, nor were any other adjustments allowed.

Surrogate Country Selection

Section 773(c)(1) of the Act provides that the Department shall determine normal value on the basis of the value of the factors of production if (1) the subject merchandise is exported from a NME country, and (2) the available information does not permit the calculation of normal value under section 773(a) of the Act. In previous proceedings, the Department has considered Russia to be a NME country. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation (Magnesium From Russia),* 60 FR 16440 (March 30, 1995); and *Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation,* 60 FR 27957 (May 26, 1995). Section 771(18)(C) of the Act states that ''any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.'' Because NME status has not been revoked in any previous proceeding for Russia, we are considering Russia to be a NME country for purposes of this review. Therefore, because AVISMA is located in Russia, we have applied surrogate values to the factors of production to determine normal value.

We calculated normal value based on factors of production provided by AVISMA, in accordance with Section 773(c)(1) of the Act and section 351.408 of the Department's regulations. We determined that Venezuela is comparable to Russia in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. In addition, Venezuela is a significant producer of comparable merchandise. *See* Memorandum to the File, *Titanium Sponge from the Russian Federation; Surrogate Country Selection,* dated July 2, 1997. Therefore, in accordance with section 773(c)(4) of the Act, we selected Venezuela as a comparable surrogate on the basis of the above criteria and have used publicly available information relating to Venezuela to value the various factors of production, except as indicated below. *See* Memorandum from Jeff May, Acting Director, Office of Policy, to Holly A. Kuga, Senior Director, Office of AD/CVD Enforcement, October 20, 1997, and Memorandum from Jeff May, Acting Director, Office of Policy, to Holly A. Kuga, Senior Director, Office of AD/CVD Enforcement, January 27, 1998.

Normal Value

To determine normal value, in accordance with section 773(c)(3) of the Act, we valued the factors of production as follows (for further discussion, see the Analysis Memorandum for the Preliminary Results of Administrative Review, dated August 31, 1998):

- Except as noted below, we valued raw materials and by-products using the Venezuelan import data obtained by Interlink from the Commodity Trade Statistics Section, United Nations Statistics Division, (UN import statistics) for the calendar year 1996. We adjusted certain factor values to reflect the actual purity used in the production of the subject merchandise. We valued chlorine using the average of the calendar 1996 and 1997 price quotes that respondents obtained from a Venezuelan chlorine producer. We were unable to find publicly available information from Venezuela or from any of the other potential surrogate countries in order to value ilmenite, rutile concentrate and carnallite concentrate. For ilmenite, we used the 1995 Brazilian price that was reported in the 1995–1996 administrative review of this finding. We valued rutile concentrate using the 1997 Australian

price provided by Interlink. For carnallite concentrate, we used the Indian price for dolomite, a commodity similar to carnallite concentrate, that was reported in the antidumping duty investigation of magnesium from Russia (*see Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation* 60 FR 16440, 16449 (March 30, 1995)) (*Magnesium From Russia*) and used to value carnallite concentrate in the 1995–1996 administrative review of this finding. Since we obtained values for ilmenite and carnallite concentrate that are in U.S. dollars, we did not adjust for the effects of inflation.

• Pursuant to Section 351.408(c)(3), we valued direct labor by using the regression-based wage rate for Russia as posted on the Import Administration Internet website.

• For electricity, we used the simple average of the 1996 and 1997 electricity rates for industrial users in Guayana, Venezuela, as reported by the Venezuelan Chamber of the Electric Industry. To value natural gas, we used the 1996 price of gas in Venezuela as reported by the International Energy Agency's (IEA's) publication *Energy Prices and Taxes, 4th Quarter 1997.* Since this price was reported in U.S. dollars per tonne of oil equivalent, we converted the IEA price into a U.S. dollar per metric ton measure. AVISMA reported its consumption of natural gas in tons of reference fuel. Using the conversion rate in the calculation memorandum in *Magnesium From Russia,* we converted AVISMA's natural gas consumption into a metric ton measure.

• To value railcar freight in Russia, we used the Venezuelan rates obtained by the petitioner from the national Venezuelan railway authority. This rate is on a per kilometer, per ton basis. We were unable to find truck rates from Venezuela or from any of the other potential surrogate countries. Therefore, we used the Brazilian trucking rates, provided by Interlink, that were used in the 1995–1996 administrative review of this finding.

• For packing materials, we used the 1996 UN import statistics from Venezuela provided by Interlink. We valued labor used in packing with the above-referenced regression-based labor rate for Russia.

• We valued selling, general and administrative expenses and profit using the 1997 income statement for CVG Industria Venezolana De Aluminio C.A., a major aluminum producer in Venezuela.

• We were unable to find information on factory overhead for an appropriate company or industry from Venezuela or from any other potential surrogate country. Therefore, as in the 1995–1996 administrative review of this finding, we valued factory overhead using cost data reported in the public record of the antidumping administrative review of silicon metal from Brazil. In the instant review, we relied on public cost data in the 1996–1997 antidumping administrative review of silicon metal from Brazil.

• We included in normal value, where appropriate, movement expenses incurred in bringing the subject merchandise from the Russian plant to the resellers' warehouses. We valued railcar freight in Russia using the Venezuelan rates obtained by the petitioner from the national Venezuelan railway authority. We valued railcar freight and brokerage in Finland using the prices AVISMA reported in the public version of the section C response that it submitted in the instant review. We valued the Russian customs fee, paid by AVISMA on its exports of subject merchandise, using the Venezuelan exportation fee as reported by the Department's commercial service personnel in Caracas, Venezuela.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act, based on rates certified by the Federal Reserve Bank and Dow Jones Business Information Services.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Interlink Metals & Chemicals, S.A	8/1/96–7/31/97	0.00
TMC Trading International, Ltd	8/1/96–7/31/97	0.00
AVISMA Titanium-Magnesium Works	8/1/96–7/31/97	0.00
Russia-wide rate	8/1/96–7/31/97	83.96

Parties to this proceeding may request disclosure of our preliminary results within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of the preliminary results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination. The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)). This notice is published in accordance with section 777(i) of the Act.

Dated: August 31, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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