Signed at Washington, DC, this 4th day of August 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16402 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–866]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan

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

EFFECTIVE DATE: August 18, 2005.

SUMMARY: We preliminarily determine that imports of superalloy degassed chromium from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1392 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2005, the Department of Commerce (the Department) initiated the antidumping investigation of superalloy degassed chromium from Japan. *See Initiation of Antidumping Duty Investigation: Superalloy Degassed Chromium from Japan*, 70 FR 16220 (March 30, 2005) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*. We received comments regarding product coverage from interested parties. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the ''Scope Comments'' section below.

On March 31, 2005, the Department issued quantity and value (Q&V) questionnaires to nine potential respondents. On April 19, 2005, we issued a memorandum to the file including the responses of eight of the nine companies from which we requested Q&V information. *See* Memorandum from Susan Lehman to the File entitled ''Superalloy Degassed Chromium from Japan Mini Quantity and Value Questionnaire Responses.'' On April 28, 2005, we concluded that the only potential respondent was JFE Material Co., Ltd. (JFE Material). *See* the Memorandum from Thomas Schauer to the File entitled ''Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan Respondent Selection'' (Respondent Selection Memo). On May 3, 2005, we issued a memorandum to the file including the response of the ninth company (Sojitz Corporation) from which we requested Q&V information. The response we received from Sojitz Corporation to our Q&V questionnaire did not alter out conclusion that JFE Material was the only potential respondent. *See* Memorandum from Susan Lehman to the File entitled ''Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan Sojitz Corporation.''

On April 21, 2005, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of superalloy degassed chromium. *See Superalloy Degassed Chromium from Japan*, 70 FR 20771 (April 21, 2005).

On April 29, 2005, we issued Sections A, B, C, D, and E[1] of the antidumping questionnaire to JFE Material. We did not receive a response from JFE Material by the close of business on June 6, 2005, the established deadline. On June 8, 2005, we issued a letter to JFE Material extending the deadline for submission of the antidumping questionnaire response to June 15, 2005, thereby affording it additional time to respond. We received no response from JFE Material to our questionnaire nor any other communication from JFE Material since we issued the questionnaire.

Period of Investigation

The period of investigation is January 1, 2004, through December 31, 2004.

Scope of Investigation

The product covered by this investigation is all forms, sizes, and grades of superalloy degassed chromium from Japan. Superalloy degassed chromium is a high–purity form of chrome metal that generally contains at least 99.5 percent, but less than 99.95 percent, chromium. Superalloy degassed chromium contains very low levels of certain gaseous elements and other impurities (typically no more than 0.005 percent nitrogen, 0.005 percent sulphur, 0.05 percent oxygen, 0.01 percent aluminum, 0.05 percent silicon, and 0.35 percent iron). Superalloy degassed chromium is generally sold in briquetted form, as ''pellets'' or ''compacts,'' which typically are 1½ inches x 1 inch x 1 inch or smaller in size and have a smooth surface. Superalloy degassed chromium is currently classifiable under subheading 8112.21.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This investigation covers all chromium meeting the above specifications for superalloy degassed chromium regardless of tariff classification.

Certain higher–purity and lower–purity chromium products are excluded from the scope of this investigation. Specifically, the investigation does not cover electronics–grade chromium, which contains a higher percentage of chromium (typically not less than 99.95 percent), a much lower level of iron (less than 0.05 percent), and lower levels of other impurities than superalloy degassed chromium. The investigation also does not cover ''vacuum melt grade'' (VMG) chromium, which normally contains at least 99.4 percent chromium and contains a higher level of one or more impurities (nitrogen, sulphur, oxygen, aluminum and/or silicon) than specified above for superalloy degassed chromium.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for

[1] Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We granted extensions to the time limit for submitting scope comments on May 3, 2005, and May 17, 2005.

On May 24, 2005, Mitsui & Co. (U.S.A.), Inc. (Mitsui), submitted timely scope comments in which it argued that the Department should revise the language of the scope to clarify that chromium metal with a chromium content either below 99.5 percent or equal to or above 99.95 percent is excluded from the scope. On June 3, 2005, Eramet Marietta Inc. and Paper, Allied–Industrial, Chemical and Energy Workers International Union (the petitioners) submitted rebuttal comments to Mitsui's scope comments. The petitioners argue that Mitsui's ''proposed changes are contrary to the intent of the petition and would permit wholesale circumvention.'' On June 10, 2005, Mitsui submitted rebuttal comments arguing that, contrary to the petitioners' assertions, creating a more finite scope definition is necessary to counteract circumvention. On June 24, 2005, the petitioners submitted rebuttal comments to Mitsui's June 10, 2005, submission, arguing against Mitsui's proposed changes to the scope of this investigation.

On May 24, 2005, Tosoh Corporation and Tosoh Specialty Material Corporation (collectively, Tosoh) submitted scope comments in which it argued that the following products produced and/or exported by Tosoh are outside the scope of the proceeding on superalloy degassed chromium: certain chromium sputtering targets and spent sputtering targets without a metal backing plate; certain chromium sputtering targets with a metal backing plate; certain chromium ingots; non–degassed chromium metal flakes. Tosoh claimed that the petitioners agreed with their assertion. In their June 1, 2005, submission, the petitioners agreed with Tosoh that it would be appropriate for the Department to determine that the above–mentioned products are outside the scope of the investigation. On August 4, 2005, the petitioners provided additional clarification with respect to their position on Tosoh's scope–clarification request.

We do not have the technical information at this time to determine whether clear chromium–content parameters exist which define superalloy degassed chromium. As such, we have not made a decision with respect to Mitsui's scope comments. Further, we continue to evaluate the scope comments with respect to Tosoh's scope–clarification request and the petitioners' August 4, 2005, suggested scope language.

The Department invites all interested parties to submit comments with respect to the scope by September 1, 2005, and rebuttal comments by September 7, 2005. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consideration is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the final determination.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to JFE Material.

A. Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (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 and in the form or 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 782(i), 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, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states 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; and (5) the information can be used without undue difficulties.

In this case, JFE Material did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, JFE Material did not respond to the Department's questionnaire, which is necessary for the Department to complete its calculations. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based JFE Material's dumping margin on facts otherwise available.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority 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 from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon–Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004).

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 870 (1994) (SAA). Further, ''affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties*, 62 FR 27355 (May 19, 1997). Although the Department provided the respondent with notice of the consequences of failure to respond adequately to the questionnaire in this case, JFE Material did not respond to the questionnaire. This constitutes a failure on the part of JFE Material to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776 of the Act. Therefore, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. *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) (the Department applied total AFA where the respondent failed to

respond to the antidumping questionnaire).

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 SAA at 829–831. In this case, because we are unable to calculate a margin based on JFE Material's own data and because an adverse inference is warranted, we have assigned to JFE Material the margin alleged in the petition and which we included in the notice of initiation of this investigation. *See Initiation Notice*, 70 FR at 16222.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. 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) and SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre–initiation analysis. *See* the March 24, 2005, Office of AD/CVD Operations Initiation Checklist (*Initiation Checklist*) on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

For this preliminary determination, we examined evidence supporting the calculations in the petition to determine the probative value of the margins in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export–price and normal–value calculations on which the margins in the petition were based. We find that the estimated margin we set forth in the *Initiation Notice* has probative value. *See* Memorandum to the File from Dmitry Vladimirov entitled ''Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,'' dated August 11, 2005. Therefore, in selecting AFA with respect to JFE Material, we have applied the margin rate of 129.32 percent, the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice*.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''all others'' rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight–average margins other than the zero, *de minimis*, or facts–available margins to establish the all others rate. When the data does not permit weight–averaging such other margins, the SAA provides that the Department may use any other reasonable methods. *See* SAA at 873.

Because the petition contained only one estimated dumping margin and the sole respondent did not provide a questionnaire response, there are no additional estimated margins available with which to create the all others rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002). Therefore, we are using the initiation margin of 129.32 percent as the all others rate.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of superalloy degassed chromium from Japan 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 in the chart below. These suspension–of-liquidation instructions will remain in effect until further notice. The weighted–average dumping margins are as follows:

Manufacturer or Exporter	Weighted–Average Margin (percent)
JFE Material Co., Ltd. ..	129.32
All Others	129.32

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 30 days after the publication of this notice. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination within 75 days after the date of this preliminary determination.

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

Dated: August 11, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4515 Filed 8–17–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 050808218–5218–01]

Effect of the Propane Education and Research Council's Operation, Market Changes and Federal Programs on Propane Consumers

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Department of Commerce (the Department) is seeking public comment on whether the operation of the Propane Education and Research Council (PERC), in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on residential, agricultural, process and nonfuel users of propane. This notice of inquiry is part of an effort to collect information to fulfill requirements under the Propane Education and Research Act of 1996 that established PERC and requires the Secretary of Commerce to assess the impact of PERC's activities on propane consumers.

DATES: Comments on this notice must be submitted on or before September 19, 2005.

ADDRESSES: You may submit comments by any of the following methods:

E-mail: *Shannon_Fraser@ita.doc.gov.* Include the phrase ''Propane Price Impacts on Consumers'' in the subject line;

Fax: (202) 482–0170 (Attn: Shannon Fraser);

Mail or Hand Delivery/Courier: Shannon Fraser, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Suite 4053, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the submission of comments or to request copies of submitted comments, contact Shannon Fraser by telephone at (202) 482–3609, or e-mail at *Shannon_Fraser@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: The Propane Education and Research Act of 1996 (Pub. L. 104–284) established the Propane Education and Research Council to enhance consumer and employee safety and training, to provide for research and development of clean and efficient propane utilization equipment, and to inform and educate the public about safety and other issues associated with the use of propane.

Section 12 of the Act requires the Secretary of Commerce to prepare and submit to Congress and the Secretary of Energy a report examining whether operation of the Council, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers, including residential, agriculture, process, and nonfuel users of propane. The Secretary of Commerce shall consider and, to the extent practicable, shall include in the report submissions by propane consumers, and shall consider whether: (1) There have been long-term and short-term effects on propane prices as a result of the Council's activities and Federal programs; and (2) whether there have been changes in the proportion of propane demand attributable to various market segments. If the Secretary of Commerce concludes that there has been an adverse effect related to the Council's activities, the Secretary of Commerce shall make recommendations for correcting the situation.

In order to assist in the preparation of this study, the Department is seeking public comment on the effect of PERC's operation, market changes and Federal programs on propane consumers. For information on the operation and programs of PERC, you may visit PERC's Web site at *http://www.propanecouncil.org* or call PERC at (202) 452–8975.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on September 19, 2005. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying. All comments must be submitted to the Department through one of the methods listed under **ADDRESSES**.

The office does not maintain a separate public inspection facility. If you would like to view any comments received in response to this solicitation, please contact the individual listed in **FOR FURTHER INFORMATION CONTACT**.

Joseph Bogosian,

Deputy Assistant Secretary for Manufacturing.

[FR Doc. E5–4514 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061405A]

Taking Marine Mammals Incidental to Specified Activities; Port Sutton Navigation Channel, Tampa Bay, FL

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for an incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for authorizations to take marine mammals, by harassment, incidental to expanding and deepening the Port Sutton Navigation Channel in Tampa Harbor, FL (Port Sutton project). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1–year Incidental Harassment Authorization (IHA) to the Corps to incidentally take, by harassment, bottlenose dolphins (*Tursiops truncatus*) as a result of conducting this activity and the Corps' application for regulations.

DATES: Comments and information must be received no later than September 19, 2005.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Species, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Md 20910. The mailbox address for providing e-mail comments on this action is *PR1.061405A@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of references used in this document may be obtained by writing to the address