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DATE: November 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Carbon and Alloy
Steel Cut-To-Length Plate from Austria

I. Summary

The Department of Commerce (the Department) preliminarily determines that certain carbon and alloy steel cut-to-length plate (CTL plate) from Austria is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margin is shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. Background

On April 8, 2016, the Department received an antidumping duty (AD) petition covering imports of CTL plate from Austria,¹ which was filed in proper form by ArcelorMittal USA LLC, Nucor Corporation (Nucor), and SSAB Enterprises, LLC (collectively, the petitioners). The Department initiated this investigation on April 28, 2016.²

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan and Turkey; and for the Imposition of Countervailing Duties on Imports from Brazil, the People’s Republic of China and the Republic of Korea, dated April 8, 2016 (the Petitions).

² See *Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People’s Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair Value Investigations*, 81 FR 27089 (May 5, 2016) (*Initiation Notice*).



In the *Initiation Notice* published in the *Federal Register*, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ However, because there was only one potential respondent named in the petition for Austria, we selected this company as the sole respondent in this proceeding.

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of CTL plate to be reported in response to the Department's AD questionnaire.⁴ The Department received a number of timely scope comments on the record this investigation, as well as on the records of the companion CTL plate investigations involving Belgium, Brazil, France, Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and Turkey.⁵

On May 27, 2016, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of CTL plate from Austria.⁶

On June 2, 2016, one of the petitioners, *i.e.*, Nucor, and various other interested parties in this and/or the companion AD investigations, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On June 8, 2016, Nucor and various other interested parties filed rebuttal comments.

The producer/exporter voestalpine, which is the sole respondent in the AD investigation of CTL plate from Austria, submitted timely responses to the Department's AD questionnaire (sections A-E) from June, 30, 2016, through August 2, 2016. The Department issued supplemental

³ See *Initiation Notice*, 81 FR at 27095.

⁴ *Id.*, at 27090, 27091.

⁵ For further discussion of these comments, see Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2016 (Preliminary Scope Decision Memorandum), and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated October 13, 2016 (Additional Preliminary Scope Decision Memorandum).

⁶ See *Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; Determinations*, 81 FR 33705 (May 27, 2016). See also Memorandum to the File from Brittany Bauer, Analyst, entitled, "Placing the International Trade Commission Preliminary Report on the record for the Anti-Dumping Investigations of Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey," dated October 7, 2016.

questionnaires to the company and received timely responses to those questionnaires from September 14, 2016, through October 13, 2016.

On August 9, 2016, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the determination until no later than November 4, 2016.⁷

On September 6, 2016, the Department addressed the scope comments placed on the record of this investigation by interested parties.⁸ On October 17, 2016, petitioner SSAB Enterprises filed pre-preliminary determination comments.⁹ On October 19, 2016, and October 25, 2016, voestalpine filed pre-preliminary determination comments and rebuttal comments, respectively.¹⁰

In October 24, 2016, voestalpine requested that the Department postpone the final determination, and that provisional measures be extended.¹¹

We are conducting this investigation in accordance with section 733(b) of the Act.

III. Period of Investigation

The period of investigation (POI) is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petitions, which was April 2016.¹²

IV. Preliminary Determination of Critical Circumstances

On July 26, 2016, the petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise.¹³ On September 7, 2016, the Department published its

⁷ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 81 FR 59185 (August 29, 2016).

⁸ See Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum, respectively.

⁹ See Letter from SSAB Enterprises, "Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: SSAB's Comments in Anticipation of the Preliminary Determination," dated October 17, 2016.

¹⁰ See Letter from voestalpine, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Pre-Preliminary Determination Comments," dated October 19, 2016; and Letter from voestalpine, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Response to SSAB's Comments in Anticipation of the Preliminary Determination," dated October 19, 2016.

¹¹ See Letter from voestalpine, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Request to Postpone Final Determination," dated October 24, 2016.

¹² See 19 CFR 351.204(b)(1).

¹³ See Letter from the Petitioners, "Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Critical Circumstances Allegations," dated July 26, 2016.

preliminary critical circumstances determinations.¹⁴ The Department preliminarily determined that critical circumstances existed for imports of subject merchandise from voestalpine.

VII. Scope Comments

In accordance with the *Preamble* to the Department's regulations,¹⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.¹⁶ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*, as well as on additional language proposed by the Department.¹⁷ For discussion of changes to the scope from that identified in the *Initiation Notice*, see the "Scope Comments" section of the accompanying *Federal Register* notice.

VIII. Affiliation and Collapsing of Affiliates

We preliminarily determine that the following companies are affiliated, pursuant to section 771(33)(F) of the Act: voestalpine Grobblech and voestalpine Steel Service Center GmbH, producers of carbon plate; Bohler Edelstahl GmbH & Co KG and Bohler Bleche GmbH & Co KG, producers of alloy plate; and Bohler International GmbH, a home-market sales affiliate.¹⁸ In addition, based on the evidence provided in the respondent's questionnaire responses and 19 CFR 351.401(f), we preliminarily determine that these five companies should be collapsed and treated as a single entity in this investigation, *i.e.*, voestalpine.¹⁹ This finding is based in part on the determination that the carbon plate producers, Grobblech and SSC, and the high alloy plate producers, BEG and BBG, have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, pursuant to 19 CFR 351.401(f)(1). Additionally, this finding is based on the determination that the level of common ownership, management overlap, and intertwined operations among the five companies, may result in a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f)(2).²⁰

¹⁴ See *Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey; Antidumping and Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances*, 81 FR 61666 (September 7, 2016).

¹⁵ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁶ See *Initiation Notice*, 81 FR at 27090.

¹⁷ For a summary of the product coverage comments and rebuttal responses submitted on the record of this investigation, and accompanying discussion and analysis of all comments timely received, see Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum.

¹⁸ See Memorandum to Scot Fullerton, Director, Office VI, "Less Than Fair Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Preliminary Affiliation and Collapsing Memorandum for voestalpine," dated concurrently with this memorandum.

¹⁹ We refer to the collective entity throughout the remainder of this document as voestalpine.

²⁰ See voestalpine's response to Section A of the antidumping duty questionnaire, dated June 29, 2016 (Section A Response), 18-22 and Exhibit A-6.

IX. Discussion of the Methodology

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether voestalpine's sales of subject merchandise from Austria to the United States were made at LTFV, the Department compared the export price (EP) or constructed export price (CEP), as appropriate, to the normal value (NV), as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this memorandum.

A) *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs, *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²¹ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code or state, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the

²¹ See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly, such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot

account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) *Results of the Differential Pricing Analysis*

For voestalpine, based on the results of the differential pricing analysis, the Department preliminarily finds that 69.63 percent of the value of U.S. sales pass the Cohen's *d* test,²² and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for voestalpine.

X. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Austria during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products, based on the physical characteristics reported by the respondents, in the following order of importance: quality, minimum specified carbon content, minimum specified chromium content, minimum specified nickel content, minimum specified yield strength, nominal thickness, heat treatment status, nominal width, form, painting, the existence of patterns in relief and descaling.²³

²² See the Memorandum to the File from Edythe Artman, International Trade Compliance Analyst, “Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria” dated November 4, 2016 (voestalpine Preliminary Analysis Memorandum) at 5.

²³ See letter from voestalpine entitled, “Product Characteristics for the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria,” dated June 10, 2016.

XI. Date of Sale

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁴ The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²⁵

For both its home-market and U.S. sales, voestalpine reported invoice date as the date of sale, except in instances where shipment date preceded the invoice date. The respondent explained that, for all affiliates making sales, changes in the material terms of sale can and do take place until the time of invoicing, which triggers the companies' related sales revenue and accounts receivable accounting entries.²⁶ For this reason, voestalpine reported invoice date as the date of sale except in instances where the shipment date occurred before the invoice date.²⁷ Based on this information and our practice, we preliminarily determine that the earliest date, either the invoice date or the shipment date, is the most appropriate selection for the date of sale for sales in both the home and U.S. markets.

XII. Export Price/Constructed Export Price

For sales reported as EP sales by voestalpine, we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise warranted. For sales reported as CEP sales, we used CEP methodology, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and because EP methodology was not otherwise warranted.

We calculated EP and CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments, discounts and rebates. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, inland insurance expenses, brokerage and

²⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²⁶ See voestalpine's Section A Response at 41-42; voestalpine's response to Section B of the questionnaire, dated July 15, 2016 (Sections B-D Response), at B-35-B-36 and at C-29-C-30; voestalpine's response to the Department's August 26, 2016, supplemental questionnaire, dated September 14, 2016 (Section A Supp.), at SQ-A-24-SQ-A-25.

²⁷ See Sections B-D Response at B-35-B-36 and at C-29-C-30; Section A Supp at SQ-A-24-SQ-A-25.

handling expenses incurred in the home market, international freight, marine insurance, brokerage and handling expenses incurred in the United States, U.S. inland freight and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. For EP sales, we then added U.S. direct selling expenses, *i.e.*, credit expenses, commissions, bank charges, credit card charges, further-manufacturing expenses and U.S. repacking costs. Because voestalpine incurred commissions on EP sales but not comparison-market sales, we capped the amount of the commissions added to NV by the amount of indirect selling expenses incurred in the home market, pursuant to 19 CFR 351.410(e).

Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses, *i.e.*, credit expenses, commissions, bank charges, credit card charges, further-manufacturing expenses and repacking costs, and indirect selling expenses, including inventory carrying costs incurred in the United States.

We made an adjustment for CEP profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by voestalpine and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

XIII. Normal Value

A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

We determined that the aggregate volume of voestalpine's home-market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.²⁸ Therefore, for voestalpine's margin analysis, we used home-market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B) *Affiliated-Party Transactions and Arm's-Length Test*

During the POI, voestalpine made sales of the foreign like product in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To

²⁸ See Sections B-D Response at B-7 – B-8.

test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.²⁹ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.³⁰

C) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent).³¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³² In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, *i.e.*, NV based on either home-market or third-country prices,³³ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁴

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same level of trade as the EP or CEP, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing EP or CEP sales at a different level of trade in the comparison market, where available data make it possible, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if

²⁹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

³⁰ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

³¹ See 19 CFR 351.412(c)(2).

³² *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

³³ Where NV is based on constructed value (CV), we determine the NV level of trade based on the level of trade of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³⁴ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

the NV level of trade is at a more advanced stage of distribution than the level of trade of the CEP and there is no basis for determining whether the difference in levels of trade between NV and CEP affects price comparability, *i.e.*, no level-of-trade adjustment is possible, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁵

In the home market, voestalpine reported that it made sales through four channels of distribution, *i.e.*, direct sales to unaffiliated customers, sales through an affiliated distributor but delivered from the mill, sales through an affiliated distributor without further processing, and sales through an affiliated distributor who performed further processing.³⁶ According to voestalpine, it performed the following selling functions for sales to all home-market customers: general promotion and marketing, sales forecasting, direct sales personnel, sales/marketing support, freight and delivery arrangements, product defect claim-related services, order processing and invoicing, technical service support, after-sales services, and the provision of freight and delivery support.³⁷ For channels 3 and 4, voestalpine also performed inventory maintenance and, for channel 4, it performed functions related to the further processing of product.³⁸

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that voestalpine performed functions from three categories for all sales but performed inventory maintenance only for sales through channels 3 and 4, as stated above.³⁹ Furthermore, we find that voestalpine performed the activities to a lesser degree for sales through channel 1 than the other channels, as it reported only performing activities to a low degree for channel 1.⁴⁰ Therefore, we determine that there are three levels of trade for voestalpine in the home market – one for channel 1 sales, one for channel 2 sales, and a third for channel 3 and 4 sales. The respondent distinguished channel 4 sales from channel 3 sales because it performed further-processing functions for these sales; specifically, it identified the functions as sawing, cutting, finishing or testing of the products.⁴¹ However, we consider these functions to be part of the manufacturing process for these sales and not related to selling activities and, apart from these functions, there is no difference between the selling activities performed, and the degree to which they are performed, for sales through channel 3 and those through channel 4. Hence, we find these two channels constitute one level of trade.

With respect to the U.S. market, voestalpine reported that it made sales through four channels of distribution, *i.e.*, direct mill sales to unaffiliated customers, sales through the U.S. affiliated distributor but delivered from the mill, sales through the U.S. affiliated distributor without further processing, and sales through the U.S. affiliated distributor who performed further

³⁵ See *OJ from Brazil at Comment 7*.

³⁶ See Section A Response at 22-29 and Exhibits A-7 and A-8; Section A Supp at Exhibit SQ-A8.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at Exhibit A-8.

processing.⁴² According to voestalpine, it performed the following selling functions for sales to all U.S. customers: general promotion and marketing, sales forecasting, direct sales personnel, sales/marketing support, freight and delivery arrangements, product defect claim-related services, order processing and invoicing, technical service support, after-sales services, and the provision of freight and delivery support.⁴³ For channels 3 and 4, voestalpine also reported performing retail-level activities and maintaining local distribution warehouses and, for channel 4, performing functions related to the further processing of product.⁴⁴ However, with respect to CEP sales, or the sales made through channels 2, 3, and 4, voestalpine only performed two of the selling activities, making freight and delivery arrangements and order processing and invoicing, in Austria to the same degree for all such sales.⁴⁵ All other activities for these channels were performed in the United States by voestalpine's U.S. sales affiliate and, in keeping with our precedent stated above, are disregarded in our level-of-trade analysis.⁴⁶ Thus, we determine there to be only one CEP level of trade, in addition to the one level of trade reported for EP sales, *i.e.*, the channel 1 sales.

In comparing the EP level of trade to the home-market level of trades, we find no significant difference between selling functions voestalpine performed for its EP sales and its home-market sales through channel 1. Indeed, the same functions were performed on these sets of sales, with only a slight difference in the degree to which the sales forecasting and sales/marketing support activities were performed. Thus, where possible, we matched EP sales to sales at the same level of trade in the home market, *i.e.*, the level of trade for channel 1 sales and made no level-of-trade adjustment. Where we matched EP sales to home-market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between the different levels of trade in the home market. We found that there was such a pattern and, therefore, we made an adjustment for the differences in level of trade where we compared EP sales to sales made at the other two home-market levels of trade.

When comparing the CEP level of trade to the home-market level of trades, we find that the selling functions performed for home-market customers at all levels of trade are performed at a higher degree of intensity or are greater in number than the selling functions performed at the CEP level of trade. Thus, we preliminarily conclude that all three of the home-market levels of trade are at a more advanced stage than the CEP level of trade. Finally, the available data does not permit us to determine whether a level-of-trade difference affects price comparability in order to permit for a level-of-trade adjustment to be made to normal value. Accordingly, to adjust for differences in any levels of trade between the home and U.S. markets, we have preliminarily applied a CEP offset to normal value, in accordance with section 773(a)(7)(B) of the Act.⁴⁷

⁴² See Section A Response at 22-29 and Exhibits A-7 and A-8; Section A Supp at Exhibit SQ-A8.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *OJ from Brazil at Comment 7*.

⁴⁷ The CEP offset from home-market net price is subject to an offset cap, which is calculated as the sum of home-market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

C) *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the cost of production (COP).⁴⁸ This law does not specify dates of application for those amendments.⁴⁹ On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁵⁰ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁵¹ Accordingly, the Department requested this information from voestalpine in this investigation. We examined voestalpine's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.

We relied on the COP data submitted by voestalpine except as follows:⁵²

- We adjusted voestalpine's submitted COP data to reflect our application of the major input rule pursuant to section 773(f)(3) of the Act.
- We also made an adjustment to reflect our application of the transactions-disregarded rule pursuant to section 773(f)(2) of the Act.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home-market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. In particular, in determining whether

⁴⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁴⁹ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petitions.

⁵⁰ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

⁵¹ *Id.*, 80 FR at 46794-95.

⁵² See Memorandum to Neal M. Halper, Director, Office of Accounting, from Milton I. Koch, International Trade Accountant, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Voestalpine," dated concurrently with this memorandum.

to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts and rebates, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of voestalpine's home-market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) *Calculation of NV Based on Comparison-Market Prices*

We calculated NV based on delivered or ex-factory prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for billing adjustments and early payment discounts, in accordance with 19 CFR 351.401(c). We also made deductions, where appropriate, from the starting price for certain movement expenses, *i.e.*, inland freight and inland insurance, and for certain direct selling expenses, *i.e.*, credit expenses and selling expenses for stocking, handling, and logistics services, pursuant to section 773(a)(6)(B)(ii) of the Act. For EP sales, we then added U.S. direct selling expenses, *i.e.*, credit expenses, commissions, bank charges and credit card charges. For all sales, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this

adjustment on the difference in the variable cost of manufacturing of the foreign-like product and that of the subject merchandise.

Finally, as discussed in the "Level of Trade" section above, we made an offset to CEP, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), for voestalpine. We calculated the CEP offset as the lesser amount of the indirect selling expenses incurred on the home-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

XIV. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XV. Conclusion

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 NOVEMBER 2016

Date