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May 2, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Decision Memorandum for the Preliminary Determination of
the Antidumping Duty Investigation of Grain-Oriented
Electrical Steel from the Czech Republic

SUMMARY

The Department of Commerce (the Department) preliminarily determines that grain-oriented electrical steel (GOES) from the Czech Republic 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 period of investigation (POI) is July 1, 2012, through June 30, 2013.

BACKGROUND

On September 18, 2013, the Department received an antidumping duty (AD) petition concerning imports of GOES from the Czech Republic and several other countries filed in proper form by AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, the petitioners).¹ The Department initiated this investigation on October 24, 2013.² The Department

¹ See Antidumping Duty Petitions on Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, the Federal Republic of Germany, Japan, the Republic of Korea, Poland, and the Russian Federation, filed on September 18, 2013 (petition).



set aside a period of time for parties to raise issues regarding product coverage and invited parties to submit comments within 20 calendar days of publication of the Initiation Notice.³ At the time of initiation, the Department named the only known producer/exporter, ArcelorMittal Frýdek-Místek (AMFM), as the sole respondent.⁴ The Department invited interested parties to comment on this issue.⁵

On November 20, 2013, 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 GOES from the Czech Republic.⁶ On November 21, 2013, the Department issued section A of the AD questionnaire (*i.e.*, the section relating to general information) to AMFM, and on November 25, 2013, the Department issued the balance of the AD questionnaire to AMFM.

In December 2013, AMFM responded to section A of the questionnaire, and in January 2014 it responded to sections B and C (*i.e.*, the sections relating to home market and U.S. sales, respectively) and section D (*i.e.*, the section relating to cost of production (COP)). Between January and April 2014 we issued multiple supplemental questionnaires to AMFM, and we received its supplemental questionnaire responses in these same months.

In January 2014, the Department requested that one of AMFM's customers, Sujani, respond to a number of questions concerning whether Sujani was the first entity in the chain of distribution with knowledge that the GOES it purchased from AMFM was destined for the United States and, thus, was the price discriminator for such merchandise.⁷ The Department also issued sections A

² See Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations, 78 FR 65283 (October 31, 2013) (Initiation Notice). As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government from October 1, through October 16, 2013. See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

³ See *id.*, at 65283.

⁴ As described in the Respondent Selection section of this memo, we preliminary determined to treat Sujani Enterprises, Inc. (Sujani) as a mandatory respondent.

⁵ See Initiation Notice, 78 FR 65283, 65288.

⁶ See Grain-Oriented Electrical Steel From China, Czech Republic, Germany, Japan, Korea, Poland, and Russia: Determinations, 78 FR 70574 (November 26, 2013) (ITC Preliminary).

⁷ The "price discriminator" is the entity that is in a position to set the U.S. price of subject merchandise that enters into the United States. To determine which party in the distribution chain is the price discriminator, and thus the appropriate entity to investigate or review, the Department utilizes the "knowledge test." See, *e.g.*, Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014), and accompanying Issues and Decisions Memorandum at Comment 2.

through C of the AD questionnaire to Sujani and requested that it respond to these sections if it was the first entity with knowledge of the U.S. destination. On February 6, 2014, the petitioners submitted comments arguing that AMFM knowledged that its sales to Sujani were destined for the United States and that AMFM's sales to Sujani should be reported.

On February 7, 2014, AMFM and Sujani each responded to the Department's questions regarding the extent and timing of their knowledge that the subject merchandise was destined for the United States. In these submissions, both parties indicated that Sujani was the first entity in the chain of distribution with specific knowledge that the GOES it purchased from AMFM was intended for the U.S. market. Along with its response to the knowledge questions, Sujani also submitted a response to section A of the questionnaire.

On February 10, 2014, the petitioners made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent AD investigations of GOES, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).⁸ On February 20, 2014, we postponed the preliminary determinations by 50 days.⁹ As a result, the revised deadline for the preliminary determination of this investigation is now May 2, 2014.

In February 2014, the petitioners filed a timely critical circumstances allegation alleging that critical circumstances exist with respect to imports of the merchandise under consideration,¹⁰ and we issued letters to AMFM and Sujani requesting monthly shipment data for the period January 2010 through February 2014.

Also in February 2014, AMFM responded to the petitioners' comments concerning which entity had initial knowledge that the sales of GOES produced by AMFM were destined for the United States. In this month, we also issued a supplemental questionnaire relating to Sujani's section A response, which included numerous questions relating to the selection of the appropriate comparison market. Sujani responded to these questions in two submissions made in February and March 2014.

In March 2014, Sujani submitted its sections B and C response to the Department's questionnaire, and both AMFM and Sujani responded to the Department's request for shipment data related to the critical circumstances allegation. In March and April 2014, we issued supplemental questionnaires to Sujani, and Sujani responded to these supplemental questionnaires in the same months.

⁸ See letter from the petitioners entitled, "Antidumping Investigations of Grain-Oriented Electrical Steel ("GOES") from China, Czech Republic, Germany, Japan, South Korea, Poland, and Russia: Petitioners' Request for Extension of the Preliminary Determination," dated February 10, 2014.

⁹ See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations, 79 FR 11082 (February 27, 2014).

¹⁰ See letter from the petitioners, "Grain-Oriented Electrical {sic} Steel from the Czech Republic, Poland, and the Russian Federation -- Critical Circumstances Allegations," dated February 24, 2014 (the petitioners' Critical Circumstances Allegation).

Also in March 2014, the petitioners alleged that a particular market situation (PMS) existed that would render Sujani's third country sales data unusable in this case. For further discussion, see the Particular Market Allegation section of this memorandum, below. In addition, the petitioners alleged that Sujani sold below the manufacturer's COP in its third country markets.

In April 2014, the Department selected Mexico as the appropriate comparison market for Sujani¹¹ and initiated a sales-below-cost investigation on Sujani's sales to Mexico.¹² In this month, the petitioners submitted sales-below-cost analyses, comparing both Sujani's acquisition costs and its U.S. sales prices to AMFM's COP. The Department has not analyzed these additional sales-below-cost allegations because there is no statutory basis for doing so.¹³

On April 30, 2014, the petitioners submitted arguments that GOES produced by AMFM and sold through Sujani should be treated as AMFM's U.S. sales. The Department received this submission too late for consideration for purposes of this preliminary determination.

On May 2, 2014, the Department determined that a PMS does not exist with regards to Sujani's sales to Mexico.¹⁴

Period of Investigation

The POI is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was September 2013.¹⁵

Scope of the Investigation

The scope of this investigation covers GOES. GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized

¹¹ See Memorandum to James Maeder, Office Director, AD/CVD Operations, "Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Czech Republic: Selection of the Appropriate Third Country Market for Sujani Enterprises, Inc.," dated April 1, 2014 (Third Country Market Selection Memo).

¹² See Memorandum to James Maeder, Office Director, AD/CVD Operations, "Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Czech Republic: The Petitioners' Allegation of Sales at Prices Below Cost of Production for Sujani Enterprises, Inc.," dated April 10, 2014 (COP Initiation Memo).

¹³ The Department notes that the appropriate sales to examine are the "sales of foreign like product under consideration for the determination of normal value" per section 773(b)(1) of the Act, *i.e.*, Sujani's sales to Mexico, not Sujani's acquisition costs or U.S. sales. See the "Cost of Production Analysis" section below for further information.

¹⁴ See Memorandum to James Maeder, Office Director, AD/CVD Operations, "Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Czech Republic: Allegation Involving a Particular Market Situation for Sujani Enterprises, Inc.," dated concurrently with this memorandum (Particular Market Situation Memo).

¹⁵ See 19 CFR 351.204(b)(1).

Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (i.e., laminations).

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period for interested parties to raise issues regarding product coverage.¹⁶ The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the Initiation Notice – i.e., by November 13, 2013.¹⁷

POSCO, a respondent in the concurrent AD investigation of GOES from the Republic of Korea, submitted comments on November 13, 2013, requesting that the Department clarify whether GOES that is further processed into shapes that are not square or rectangular, such as trapezoids, fall within the scope of the Department's investigation. The petitioners submitted rebuttal comments on December 11, 2013, stating such products should be within the scope of the investigation. ABB Inc., which identified itself as an interested party by virtue of it being a U.S. importer of GOES from Japan and the Russian Federation (Russia), submitted comments on December 19, 2013, claiming the petitioners' rebuttal comments represented an attempt to expand the scope beyond any product the petitioners can make.

On January 10, 2014, POSCO requested clarification regarding whether "laminations" and "cores" are covered by the scope. Specifically, POSCO stated that it believes those products are downstream products manufactured from GOES, noting "the physical and mechanical properties of the steel can be altered by any combination of the stamping or shearing, heat treatment, additional coating processes for laminations or stamping, molding, and stacking for cores, resulting in a new and different article with very different end uses." On January 24, 2014, the petitioners stated they do not wish relief on lamination products which have been: (1) cut-to-shape of the final design in which they will be incorporated into a stacked core; (2) subjected to additional post-processing heat treatment; and (3) potentially punched to create holes in their surface and subjected to additional coating processes.

On January 28, 2014, POSCO submitted additional comments, and, alluding to certain "cut to shape" products described in other submissions that it had filed (the aforementioned November 13, 2013, submission; a November 20, 2013 submission involving model matching; and a January 21, 2014, submission involving its Section A response in the GOES from Korea AD investigation), indicated that such products for which it desires scope clarification may not have undergone heat treatment but may nevertheless be stacked into a stacked transformer core. In a memorandum to the file following a meeting between Department officials and counsel to POSCO, the Department noted that "if the products are in the 'drop in' condition and suitable for

¹⁶ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also Initiation Notice, 78 FR at 65283-84.

¹⁷ Id.

production of cores without any further cutting/shaping, then based on the petitioners' January 24, 2014 letter, these products should not be reported as subject merchandise."

In a letter dated April 1, 2014, Custom Materials, Inc. asked that the wording of the scope be changed to explicitly exclude what it terms "off-cuts," which allegedly are pieces of GOES of no greater than three inches in width that are cut from wider coils. Custom Materials, Inc. claims to import such merchandise and states that it is "traditionally sold as waste or scrap for remelting and recovery purposes." However, we have made no changes to the wording of the scope of the investigations to exclude so-called "off-cuts," as these are strips of subject GOES in coils specifically covered by the investigation.

On April 29, 2014, the petitioners submitted revised scope language addressing POSCO's request to exclude certain cut to shape products. We have incorporated that language in this preliminary determination.

Product Comparisons

In the Initiation Notice, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On November 13, 2013, OJSC Novolipetsk Steel (NLMK), (a respondent in the concurrent AD investigation of GOES from Russia), POSCO and the petitioners submitted comments on the product characteristics. Baoshan Iron & Steel Co., Ltd. (a respondent in the concurrent AD investigation of GOES from the People's Republic of China) submitted comments on November 18, 2013. POSCO, NLMK, and the petitioners submitted rebuttal comments on November 20, 2013.

We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining models and, when necessary, for comparing similar models, for this AD investigation. The Department identified the following seven criteria for matching U.S. sales of subject merchandise to normal value (NV): maximum core loss, nominal thickness, permeability, domain refinement, coating, form, and nominal width. These criteria were included in the questionnaires issued to AMFM and Sujani, as well as the respondents in the concurrent GOES investigations.

Respondent Selection

As stated above, AMFM was the sole mandatory respondent in this investigation identified at the time of initiation. The Department set aside a period of time for parties to comment on this.¹⁸ No parties submitted comments on the Department's decision to individually examine AMFM as the mandatory respondent. Consequently, the Department has not changed its decision to individually examine AMFM as a mandatory respondent.

However, in December 2013, AMFM informed the Department that one of its main customers, Sujani, acted as a reseller outside of the Czech Republic.¹⁹ AMFM stated that, although it

¹⁸ See Initiation Notice, 78 FR at 65288.

¹⁹ See AMFM's December 19, 2013, section A response at 5-8.

recorded all sales to Sujani as U.S. sales in its books and records based on Sujani's U.S. address, it had no actual knowledge of which market the GOES that it sold to Sujani was destined at the time of sale.²⁰ As a result, on January 24, 2014, the Department requested that both AMFM and Sujani respond to a number of questions designed to elicit information related to the knowledge-of-destination question. At the same time, we issued sections A through C of the AD questionnaire to Sujani and instructed it to respond if Sujani was the first company with knowledge that specific shipments of GOES were destined for the United States.

In February 2014, AMFM and Sujani submitted consistent responses to the Department's knowledge-of-destination questions, stating that Sujani is the first entity with knowledge that the GOES produced by AMFM is sold to customers in the United States.²¹ Specifically, both parties maintained that Sujani does not disclose to AMFM the ultimate destination of the GOES it purchases in the Czech Republic, beyond the fact that the merchandise will be exported to the North American market.²² Moreover, both parties maintained that Sujani does not inform AMFM of the names of its U.S. customers, nor are there any labeling requirements that are specific to the United States.²³

From January through April 2014, the petitioners submitted comments on this issue, in which they argued that the Department should instruct AMFM to report all of the sales that AMFM made to Sujani during the POI.²⁴ According to the petitioners, AMFM and Sujani failed to submit adequate documentation to support their claims and, thus, there is insufficient evidence on the record to find that Sujani is the first entity in the chain of distribution which knew that the GOES at issue was destined for the United States.²⁵ Therefore, the petitioners argued that the Department should collect sales information from AMFM and rely on it instead of Sujani's data when performing its margin analysis.

After analyzing AMFM's and Sujani's submissions, and considering the petitioners' comments on this issue, we preliminarily determine that all evidence on the record supports a finding that Sujani was the first company in the chain of distribution with knowledge of destination for the GOES that it resold in the United States and, thus, is the potential price discriminator for such merchandise. Therefore, we are treating Sujani as a mandatory respondent in this investigation. Although the petitioners contend that AMFM and Sujani have not adequately supported their claims, there is no evidence on the record that contradicts them. Nonetheless, we intend to

²⁰ See *id.*, at 6.

²¹ See AMFM's and Sujani's February 7, 2014, responses; and AMFM's February 14, 2014, rebuttal comments.

²² See, e.g., AMFM's February 7, 2014, response at 2; Sujani's February 7, 2014, response at 2; and AMFM's February 14, 2014, rebuttal comments at 2.

²³ See, e.g., AMFM's February 7, 2014, response at 2-3; Sujani's February 7, 2014, response at 2; and AMFM's February 14, 2014, rebuttal comments at 2.

²⁴ See the petitioners' comments submitted on January 8, 2014, January 30, 2014, February 6, 2014, March 24, 2014, April 3, 2014, and April 11, 2014.

²⁵ See the petitioners' comments submitted on February 6, 2014.

pursue this issue at verification and we will obtain additional supporting documentation then. For further discussion, see the Particular Market Situation Memo.

Critical Circumstances

On February 24, 2014, the petitioners filed a timely allegation, pursuant to section 733(e)(1) and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.²⁶ On February 27, 2014, the Department requested shipment data from AMFM and Sujani concerning the critical circumstances allegation. AMFM and Sujani responded to the Department's request for shipment data on March 12, 2014, and March 14, 2014, respectively.²⁷ In its submission, Sujani declined to provide the requested shipment data, arguing that compiling the data was too burdensome for a small company. Rather, Sujani contended that the Department should rely on census data already on the record which, it claims, shows that critical circumstances do not exist if the Department uses a longer "base period" than in the petitioners' allegation.²⁸ Although the Department asked Sujani a second time to provide its shipment data, on March 27, 2014, Sujani again asserted that the Department should rely on the census data already on the record.²⁹

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

In their allegation, the petitioners contend that, because the Department has not yet made its preliminary determination in this investigation, the Department may rely on the margins alleged in the petition and corroborated in the Department's Initiation Notice to decide whether importers knew, or should have known, that dumping was occurring.³⁰ The estimated margins in

²⁶ See the petitioners' Critical Circumstances Allegation.

²⁷ See AMFM's March 12, 2014, and Sujani's March 14, 2014, Critical Circumstances responses.

²⁸ See Sujani's March 14, 2014, Critical Circumstances response at 12.

²⁹ See Sujani's March 27, supplemental response at 5.

³⁰ See the petitioners' Critical Circumstances Allegation.

the Initiation Notice for the Czech Republic range from 68.46 to 235.50 percent.³¹ Therefore, the petitioners maintain that there is information on the record of this investigation to impute knowledge to importers that GOES from the Czech Republic was being sold in the United States at LTFV.³²

The petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.³³ Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioners submitted import statistics for the subject merchandise covered by the scope of this investigation for the period between October 2013 and December 2013 as evidence of massive imports of GOES from the Czech Republic during a relatively short period.³⁴

Analysis

We considered each of the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient.³⁵ With regard to imports of GOES from the Czech Republic, the petitioners make no specific mention of a history of dumping for the Czech Republic. We are not aware of any antidumping order in the United States or in any country on GOES from the Czech Republic. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from the Czech Republic pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii): Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales

The Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.³⁶ In this investigation AMFM reported both EP sales and CEP

³¹ Id., at 4; see also Initiation Notice, 78 FR at 65287.

³² See the petitioners' Critical Circumstances Allegation, at 4.

³³ See ITC Preliminary.

³⁴ See the petitioners' Critical Circumstances Allegation at 6.

³⁵ See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova, 65 FR 70696 (November 27, 2000).

³⁶ See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from

sales, and Sujani reported CEP sales. The preliminary dumping margins we calculated of 11.45 percent for AMFM and 10.35 for Sujani, the only two mandatory respondents in this investigation, do not exceed the margin thresholds considered sufficient to impute knowledge of dumping (i.e., 25 percent for EP sales and 15 percent for CEP sales). Therefore, we determine that there is not a sufficient basis to find that importers knew, or should have known, that the exporters were selling the merchandise under consideration at LTFV. Further, we preliminarily applied the average rate calculated for AMFM and Sujani to all other companies. Because the all others rate is 10.38 and does not exceed the margin thresholds considered sufficient to impute knowledge of dumping, we find that the record does not support imputing importer knowledge of sales at LTFV to imports from companies covered by the all others rate either.

Because the statutory criteria of section 733(e)(1)(A) of the Act have not been satisfied, we did not examine whether imports from AMFM and Sujani or from all other companies were massive over a relatively short period pursuant to section 733(e)(1)(B) of the Act. Accordingly, we find that the statutory criteria necessary for determining affirmative critical circumstances have not been met and, therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of GOES from the Czech Republic.

Discussion of the Methodology

To determine whether sales of GOES from the Czech Republic to the United States were made at LTFV, we compared the EP or CEP to the NV, as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this memorandum below. In accordance with section 777A(d)(1)(A) of the Act, we compared POI weighted-average EPs or CEPs to POI weighted-average NVs.

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c) (2013), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines another method is appropriate in a particular situation. The Department’s regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).³⁷ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).³⁸ The Department may determine that in particular

Moldova, 67 FR 55790; Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China, 70 FR 5606, 5607 (February 3, 2005), unchanged in Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People’s Republic of China, 70 FR 9037 (February 24, 2005).

³⁷ See 19 CFR 351.414(b)(1) and (2).

³⁸ See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. The Department will continue to develop its approach in this area based on comments received in this investigation 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 weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. 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 differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by AMFM and Sujani. Regions are defined using the reported destination code (*i.e.*, zip code) 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data 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 calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net 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. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant 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 account for 66 percent or more of the value of total sales, then the identified pattern of CEPs and EPs 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 CEPs and EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine 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 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, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative 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 margin 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 margin moves 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 AMFM, based on the results of differential pricing analysis, the Department finds that less than 33 percent of AMFM's U.S. sales pass the Cohen's *d* test, which confirms that there is not a pattern of EPs and CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.³⁹ Accordingly, the Department preliminarily determined to use the average-to-average method for all U.S. sales in making comparisons of EP and CEP to NV for AMFM.

For Sujani, based on the results of the differential pricing analysis, the Department finds that over 66 percent of Sujani's export sales confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers and time periods. Further, the Department determines that the average-to-average method can appropriately account for

³⁹ See Memorandum to the File, "Preliminary Determination Calculation for ArcelorMittal Frýdek-Místek (AMFM)," dated concurrently with this memorandum (AMFM's Preliminary Analysis Memorandum).

such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average-to-transaction method.⁴⁰ Accordingly, the Department preliminarily determined to use the average-to-average method for all U.S. sales in making comparisons of CEP and NV for Sujani.

C. Date of Sale

AMFM and Sujani reported the date of invoice to the first unaffiliated customer as the date of sale.⁴¹ 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 Secretary 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 Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁴² In this case, AMFM and Sujani reported certain U.S. sales that were shipped prior to invoicing. The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁴³ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our practice.⁴⁴

D. Export Price/Constructed Export Price

For certain sales by AMFM, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise 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 CEP methodology was not otherwise warranted based on the facts of record. We used CEP methodology for the remainder of AMFM sales, in accordance with section 772(b) of the Act, because the subject merchandise was first sold in the United States by a U.S. seller affiliated with the producer and EP methodology was not otherwise indicated. For Sujani, we used CEP methodology for all of its sales, in accordance with section 772(b) of the Act, because the sale was concluded in the United States.⁴⁵

⁴⁰ See Memorandum to the File, "Preliminary Determination Calculation for Sujani Enterprises, Inc. (Sujani)," dated concurrently with this memorandum (Sujani's Preliminary Analysis Memorandum).

⁴¹ See AMFM's January 23, 2014, response to sections B and C of the questionnaire at pages B-15 and C-16; and Sujani's March 12, 2014, response to sections B and C of the questionnaire at pages B-15 and C-16.

⁴² 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)).

⁴³ See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

⁴⁴ See id.

⁴⁵ See AKA Steel Corporation v. United States, 226 F.3d 1361 (Fed. Cir. 2000).

1. AMFM

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for inland freight from the plant to the port and ocean freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for inland freight from the plant to the port, ocean freight expenses, and freight from the port to the customer, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (imputed credit expenses) and indirect selling expenses. Finally, we made an adjustment for 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 AMFM and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

2. Sujani

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for inland freight from the plant to the port, ocean freight expenses, insurance expenses, U.S. duty expenses, U.S. brokerage and handling expenses, and freight from the port to the customer, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (commissions and imputed credit expenses) and indirect selling expenses. Finally, we made an adjustment for 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 Sujani on its sales of the subject merchandise in the United States and the profit associated with those sales.

E. Normal Value

1. 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 five percent or more of the aggregate volume of U.S. sales), we compared the volume of AMFM's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the

aggregate volume of home market sales of the foreign like product for AMFM was sufficient to permit a proper comparison with U.S. sales of the subject merchandise.⁴⁶

With respect to Sujani, this company had no sales of GOES in the Czech Republic of the foreign like product. When there are no sales in the home market of the foreign like product or when home market sales are not suitable to serve as the basis for NV, sections 773(a)(1)(B)(ii) and (C) of the Act provides that sales to a third country market may be used if the prices in such market are representative; the aggregate quantity or, if the quantity is not appropriate, the value of the foreign like product sold by the producer or exporter in the third country market is five percent of more of the aggregate quantity of the subject merchandise sold in or to the United States; and the Department does not determine that a PMS in the third country market prevents a proper comparison with the U.S. price. Therefore, based on our analysis set forth in the Third Country Market Selection Memo, we chose Mexico as the comparison market for Sujani because it is Sujani's largest third country market and the products sold to Mexico and Canada (Sujani's only other viable third country market) are equally similar with respect to physical characteristics vis-à-vis the physical characteristics of the products sold in the United States.

2. Particular Market Situation

Section 773(a)(1)(B)(ii)(III) of the Act provides that the Department may only use third country sales to determine NV if it “does not determine that the particular market situation in {the third country} prevents a proper comparison with the export price or constructed export price.” The Act does not define “particular market situation,” but the SAA states that a PMS might exist: (1) where a single sale in a foreign market constitutes five percent of sales to the United States; (2) where there are such extensive government controls over pricing in a foreign market that prices in that market cannot be considered competitively set; and (3) where there are differing patterns of demand in the United States and a foreign market.⁴⁷

As noted above, Sujani did not have a viable home market during the POI and, thus, it reported third country sales to Canada and Mexico. In March 2014, the petitioners alleged that a PMS exists with respect to Sujani's third country sales in both foreign markets. Shortly after receipt of the PMS allegation, the Department selected Mexico as the appropriate comparison market without taking a position on the issue of PMS.

The basis of the petitioners' allegation is their claim that Sujani prices the GOES that it sells in North America the same, regardless of market. The Department fully addressed this allegation in a separate memorandum because much of the allegation and analysis involve business proprietary information.⁴⁸ Therefore, as explained in the Particular Market Situation Memo, and based on the record evidence, the Department preliminarily determines that a PMS does not exist with regard to Sujani's sales to Mexico.

⁴⁶ See AMFM's December 19, 2013, response to section A of the questionnaire at Exhibit A-1.

⁴⁷ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-465, vol. 1, at 822 (1994).

⁴⁸ See Particular Market Situation Memo.

3. Affiliated-Party Transactions and Arm's-Length Test

During the POI, AMFM made sales of GOES 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 test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling 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 (LOT), we determined that the sales made to the affiliated party were at arm's length.⁴⁹ 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.⁵⁰

4. 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 LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁵¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵² In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, 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 LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁵³ 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.⁵⁴

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at

⁴⁹ 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).

⁵⁰ See section 771(15) of the Act and 19 CFR 351.102(b).

⁵¹ See 19 CFR 351.412(c)(2).

⁵² See *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, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

⁵³ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

⁵⁴ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁵⁵

In this investigation, we obtained information from the respondents regarding the marketing stages involved in making the reported comparison market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

a. AMFM

In the U.S. market, AMFM made sales through an affiliate dedicated to GOES sales, ArcelorMittal Flat Carbon Europe SA (FCE), which has offices in both the Czech Republic and Luxembourg. Sales are made to customers through two channels of distribution: 1) direct sales from AMFM/FCE to an unaffiliated U.S. customer (EP sales); and 2) sales made by an affiliated party located in the United States, ArcelorMittal International (AMI), to a U.S. customer (CEP sales).⁵⁶ These channels are referred to as Channels 1 and 2, respectively.

In AMFM's response, AMFM explains that it and FCE both perform selling activities. We examined the selling activities performed for EP sales from AMFM to the unaffiliated U.S. customer (Channel 1) and found that AMFM/FCE performed the following selling functions: sales forecasting, strategic economic planning, procurement/sourcing services, packing, order input processing, market research, technical assistance, warranty services/guarantees, and making delivery arrangements.⁵⁷ AMFM reported the same selling functions for AMFM/FCE's sales to AMI (Channel 2).⁵⁸ Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on these selling function categories, we find that AMFM performed sales and marketing, freight and delivery services, and warranty and technical services for its Channel 1 and Channel 2 sales. Therefore, because AMFM performed the same selling functions at the same relative level of intensity for both sales channels, we determine that sales in Channel 1 and Channel 2 are at the same LOT.

With respect to the home market, AMFM made sales to one customer category, through one channel of distribution (*i.e.*, direct sales to its customers).⁵⁹ We examined the selling activities

⁵⁵ See, e.g., OJ from Brazil, at Comment 7.

⁵⁶ See AMFM's section A supplemental questionnaire response dated February 5, 2014, at 6 and 7.

⁵⁷ See id., at Exhibit SA-9.

⁵⁸ See id.

⁵⁹ See id.

performed and found that AMFM performed the following selling functions: sales forecasting, strategic economic planning, procurement/sourcing services, packing, order input processing, market research, technical assistance, and warranty services/guarantees.⁶⁰ Accordingly, based on the selling function categories noted above, we find that AMFM performed sales and marketing and warranty and technical services at the same level of intensity for all customers in the home market. Therefore, we preliminarily determine that there is one LOT in the home market.

With regard to Channel 1 EP sales and Channel 2 CEP sales, we evaluated the selling function categories in the U.S. and home market LOTs and found that the selling functions in two of the three categories (*i.e.*, sales and marketing, and warranty and technical support) were performed in both the U.S. and home markets; we also found that the selling functions performed for U.S. and home market customers do not differ substantially and as such do not meet the regulatory requirement of being made at “different marketing stages.” Therefore, we determine that Channel 1/Channel 2 sales and home market sales during the POI were made at the same LOT, and as a result, a CEP offset is not warranted.

b. Sujani

As noted in the “Respondent Selection” section above, Sujani is a company located in the United States that purchases GOES from AMFM for U.S. resale. In the U.S. market, Sujani made sales to one type of customer in one channel of trade, and it reported these sales as CEP sales. Sujani explains that it takes possession of the GOES at AMFM’s factory in the Czech Republic and arranges for shipment, delivery, handling and insurance to the U.S. customer.⁶¹

In our general LOT analysis, we examine the selling activity outside of the United States as it relates to U.S. sales. Because Sujani is located in the United States, all of the selling activity for its U.S. sales took place here. We find that there are no selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Because Sujani only sold through one channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the comparison market, Sujani’s sales to Mexico were made to one type of customer and through one channel of distribution.⁶² We examined the selling activities performed and found that Sujani performed the following selling functions: customer contact/negotiations, order processing, making delivery arrangements, and warranty services.⁶³ Accordingly, based on the selling function categories noted above, we find that Sujani performed sales and marketing, freight and delivery services, and warranty and technical services for its comparison market sales. Therefore, we preliminarily determine that there is one LOT for sales to Mexico.

⁶⁰ See AMFM’s section A supplemental questionnaire response dated February 5, 2014, at Exhibit SA-9.

⁶¹ See Sujani’s response to sections B and C of the questionnaire, dated March 12, 2014, at 14 and 15.

⁶² See *id.*

⁶³ See Sujani’s sections A, B, and C supplemental questionnaire response dated April 9, 2014, at 9; and Sujani’s section A supplemental questionnaire response dated March 14, 2014, at 7.

Finally, we compared the CEP sales to the comparison market LOT and found that the selling functions performed for U.S. and Mexican customers differ substantially, such that they meet the regulatory requirement of being made at “different marketing stages.” As noted above, Sujani performs a full complement of selling activities for its Mexico sales which are reflected in its selling price, and it performs no selling activities for its U.S. sales which are reflected in the U.S. price after the deduction of expenses and profit under section 772(d) of the Act.

Therefore, we determine that Sujani’s Mexico sales during the POI were made at a different (and more advanced) LOT than its CEP LOT. However, the data available do not provide an appropriate basis to determine a LOT adjustment and, therefore, we granted Sujani a CEP offset, within the meaning of section 773(a)(7)(B) of the Act, for the preliminary determination.

5. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that AMFM’s sales of GOES in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether AMFM’s sales were made at prices below their respective COPs.

On March 31, 2014, the petitioners alleged that Sujani made sales to Mexico during the POI that were below the COP. For the COP calculation, we used the COP data reported by AMFM because Sujani did not manufacture the GOES sold in the comparison market. We find that this methodology is grounded in the Act⁶⁴ and the Department’s practice.⁶⁵ Based on our analysis of the allegation made by the petitioners, we found that Sujani’s sales to Mexico which fell below the COP were representative of the broader range of models which may be used as a basis for NV. Therefore, we determined that there were reasonable grounds to believe or suspect that Sujani’s sales of GOES in Mexico were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Sujani’s comparison market sales were made at prices below its COP.⁶⁶

a. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for G&A expenses, interest expenses, and packing costs.⁶⁷ We examined the cost data and determined that our

⁶⁴ See section 773(b)(3) of the Act.

⁶⁵ See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004), and accompanying Issues and Decision Memorandum at Comment 42.

⁶⁶ See COP Initiation Memo.

⁶⁷ See “Test of Comparison Market Sales Prices” section, below, for treatment of comparison market selling expenses.

quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below.⁶⁸

We relied on AMFM's submitted COP data, except as follows:⁶⁹

- Pursuant to section 773(f)(2) and (3) of the Act, we adjusted the transfer prices of inputs obtained from affiliated parties to reflect fair market values;
- We adjusted the interest expense ratio to include additional accounts not originally included in AMFM's interest expense ratio.

b. Test of Comparison Market Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the foreign market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling expenses.⁷⁰ The prices were net of billing adjustments, movement charges, and direct and indirect selling expenses, where appropriate.⁷¹

c. Results of COP Test

In determining whether to disregard comparison 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 when: 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.

⁶⁸ See Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 2251 (January 10, 2013), and accompanying Decision Memorandum at 9; unchanged in Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value, 78 FR 33354 (June 4, 2013).

⁶⁹ For further discussion, see Memorandum to Neal Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination for AMFM" dated concurrently with this memorandum.

⁷⁰ For Sujani, we used COPs inclusive of AMFM's indirect selling expenses because these expenses were not reported in Sujani's third country database.

⁷¹ See Sujani's Preliminary Analysis Memorandum and AMFM's Preliminary Analysis Memorandum.

We found that, for certain products, more than 20 percent of AMFM's and Sujani's comparison market sales 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 as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

6. Calculation of NV Based on Comparison Market Prices

a. AMFM

We calculated NV for AMFM on the reported packed prices to affiliated and unaffiliated customers in the home market. We made adjustments for differences in circumstances of sale, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Specifically, we made adjustments to NV for comparison to AMFM's EP transactions by deducting direct selling expenses incurred for home market sales (i.e., credit expenses) and adding U.S. direct selling expenses (i.e., credit expenses).⁷²

For home market sales compared to CEP transactions, we made deductions for home market credit expenses, pursuant to 773(a)(6)(C) of the Act.

We note that AMFM reported a sale which it believes was made outside of the ordinary course of trade. We also note that AMFM reported an imputed expense related to this sale which was not an actual expense. Although we included this sale in our analysis, we did not deduct the amount related to this imputed expense in our calculation of NV.⁷³

We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with home market sales of similar 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 for the foreign like product and subject merchandise.⁷⁴

b. Sujani

We calculated NV for Sujani on the reported delivered prices to unaffiliated customers in the comparison market. We made deductions from the starting price, where appropriate, for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for inland freight from the plant to the port, ocean freight expenses, and insurance expenses, under section 773(a)(6)(B) of the Act.

⁷² See section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c).

⁷³ See AMFM's Preliminary Analysis Memorandum.

⁷⁴ See 19 CFR 351.411(b).

For comparison market sales compared to CEP transactions, we made deductions for comparison market credit expenses, pursuant to section 773(a)(6)(C) of the Act. In accordance with 19 CFR 351.410(e), we made a commission offset by deducting indirect selling expenses incurred in the comparison market, up to the amount of the reported U.S. commission.

Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison market sales (less those indirect selling expenses used for the commission offset) or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank for the Euro rate. Because the daily exchange rate was not available for the Czech koruna, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services (Factiva).

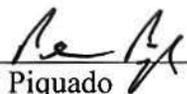
CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 MAY 2014
(Date)