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**International Trade Administration**  
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November 17, 2015

**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 Preliminary Results of the 2014-2015  
Antidumping Duty Administrative Review: Brass Sheet and Strip  
from France

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## **SUMMARY**

In response to requests from the petitioners, GBC Metals, EEC, of Global Brass and Copper, Inc., dba Olin Brass, Heyco Metals, Inc., Aurubis Buffalo, Inc., PMX Industries, Inc., and Revere Copper Products, Inc. (collectively, the petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from France,<sup>1</sup> pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). This review covers two companies, Griset SA (Griset) and KME France SAS (KME France). The period of review (POR) is March 1, 2014, through February 28, 2015. We preliminarily find that the subject merchandise has been sold at less than normal value by both Griset and KME France.

## **BACKGROUND**

On April 30, 2015, we published a notice of initiation of an administrative review of Griset and KME France.<sup>2</sup> On May 6, 2015, the Department placed on the record the results of an inquiry to U.S. Customs and Border Protection (CBP) which showed no entries of subject merchandise

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<sup>1</sup> See *Antidumping Duty Order; Brass Sheet and Strip From France*, 52 FR 6995 (March 6, 1987) (the *Order*).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 24233 (April 30, 2015) (the *Initiation Notice*).



from France during the POR.<sup>3</sup> On June 8, 2015, the Department issued the antidumping questionnaire to Griset<sup>4</sup> and KME France.<sup>5</sup> The deadline for response to section A of the antidumping questionnaire was July 1, 2015; the deadline for responses to sections B and C (and section E, if appropriate) of the antidumping questionnaire was July 17, 2015. On August 5, 2015, the Department placed on the record a memorandum demonstrating that both KME France and Griset had received (and signed for receipt of) the antidumping questionnaire, on June 12, 2015, and June 15, 2015, respectively.<sup>6</sup>

On August 31, 2015, Griset filed a submission stating that it did not have any shipments during the POR.<sup>7</sup> On September 1, 2015, we rejected this submission as untimely.<sup>8</sup> Specifically, the *Initiation Notice* states that “{i}f a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review..., it must notify the Department within 30 days of publication” of the *Initiation Notice*, or by May 30, 2015.<sup>9</sup> As Griset’s submission was filed more than eight weeks after the deadline established in the *Initiation Notice*, and Griset did not submit a request for an extension, the Department rejected the filing pursuant to 19 CFR 351.302(d).

## **SCOPE OF THE ORDER**

The product covered by the orders is brass sheet and strip, other than leaded and tinned brass sheet and strip, from France. The chemical composition of the covered product is currently defined in the Copper Development Association (“C.D.A.”) 200 Series or the Unified Numbering System (“U.N.S.”) C2000. The orders do not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the product covered by the orders has a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (“HTSUS”) item numbers 7409.21.00 and 7409.29.00.

Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the orders remains dispositive.

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<sup>3</sup> See Memorandum from Mark Flessner to the File entitled, “Brass Sheet and Strip from France: Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection for 2014-2015 Period of Review,” dated May 6, 2015.

<sup>4</sup> See Letter from Robert M. James to Griset dated June 8, 2015.

<sup>5</sup> See Letter from Robert M. James to KME France dated June 8, 2015.

<sup>6</sup> See Memorandum from Mark Flessner to the File entitled, “Brass Sheet and Strip from France: Placement on the Record of Proof of Delivery of Antidumping Questionnaire to Griset, S.A., and KME France,” dated August 4, 2015 (Proof of Delivery Memorandum).

<sup>7</sup> See Letter from Griset to the Secretary of Commerce entitled, “RE: Brass Sheet and Strip from France,” dated August 28, 2015 (submitted *via* ACCESS on August 31, 2015).

<sup>8</sup> See Letter from Robert M. James to Griset dated September 1, 2015.

<sup>9</sup> *Initiation Notice*, 80 FR at 24233.

## DISCUSSION OF THE METHODOLOGY

### Application of Facts Available and Use of Adverse Inference

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for these preliminary results with respect to the weighted-average dumping margin for Griset and KME France.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>10</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.<sup>11</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>12</sup> Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final

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<sup>10</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. 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 to section 771(7) of the Act, which relate to determinations of material injury by the ITC. 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) (*Applicability Notice*).

<sup>11</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>12</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

determination from the LTFV investigation, a previous administrative review, or other information placed on the record.<sup>13</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>14</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>15</sup> Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>16</sup>

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>17</sup> The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>18</sup>

#### *A. Use of Facts Available*

On June 10, 2015, we sent the antidumping questionnaire to Griset and KME France at the addresses provided by the petitioners *via* express delivery service.<sup>19</sup> The delivery service’s tracking system confirmed delivery,<sup>20</sup> and signature proof of delivery at the headquarters of both companies.<sup>21</sup> Neither Griset nor KME France provided a response to the antidumping questionnaire.<sup>22</sup> As a result, we preliminarily determine that Griset and KME France did not timely provide the requested information necessary for the Department to calculate antidumping duty margins for them in this review. Furthermore, by not timely responding to the Department’s questionnaire, these companies withheld information requested by the Department, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by the Department, and significantly impeded this proceeding. Moreover, because Griset and KME France failed to timely provide any information, section 782(e) of the Act is inapplicable. Accordingly, we preliminary find that the use of facts available is warranted

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<sup>13</sup> See also 19 CFR 351.308(c).

<sup>14</sup> See also 19 CFR 351.308(d).

<sup>15</sup> See SAA at 870.

<sup>16</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>17</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>18</sup> See section 776(d)(3) of the Act; TPEA, section 502(3)section.

<sup>19</sup> See Proof of Delivery Memorandum, at Attachments 1 and 4.

<sup>20</sup> *Id.*, at Attachments 2 and 5.

<sup>21</sup> *Id.*, at Attachments 3 and 6.

<sup>22</sup> As discussed above, Griset submitted a statement of no shipments more than eight weeks after the deadline for such submission had expired. We rejected the submission as untimely pursuant to 19 CFR 351.302(d). See letter from Griset to the Secretary of Commerce entitled, “RE: Brass Sheet and Strip from France,” dated August 28, 2015 (submitted *via* ACCESS on August 31, 2015); see also Letter from Robert M. James to Griset dated September 1, 2015.

in determining weighted-average dumping margins for Griset and KME France, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

### *B. Application of Facts Available With an Adverse Inference*

Section 776(b) of the Act provides that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>23</sup> In addition, the SAA<sup>24</sup> provides that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>25</sup>

Companies such as Griset and KME France, which have sold merchandise into the United States, should be knowledgeable of the laws governing their sales into the United States, including the U.S. antidumping duty law when their merchandise is subject to an antidumping duty order. Griset and KME France knew, or reasonably should have known, that any of their shipments of brass sheet and strip from France to the United States were subject to the *Order*. In addition, Griset and KME France knew, or reasonably should have known, that any such entries of subject merchandise could be, and are, subject to an administrative review in accordance with the U.S. antidumping laws. This includes the Department’s standard notifications published in the *Federal Register* announcing the opportunity to request a review<sup>26</sup> in the anniversary month of an order, the initiation of an administrative review<sup>27</sup> if one is requested, and the process for participation as an interested party to an administrative review.<sup>28</sup>

In light of the fact that Griset and KME France are on notice as to the conduct of this review, and both companies failed to timely respond to our questionnaire, we preliminarily determine that Griset and KME France have not cooperated by acting to the best of their ability in timely providing the necessary information for the Department to calculate a weighted-average dumping margin for exports of subject merchandise by Griset and KME France to the United States for this POR. Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted for the weighted average dumping margin for both Griset and KME France for the preliminary results of this administrative review.

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<sup>23</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>24</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA).

<sup>25</sup> See SAA at 870; see also, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

<sup>26</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 11161 (March 2, 2015) (*Opportunity Notice*).

<sup>27</sup> See *Initiation Notice*.

<sup>28</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); cited in both the *Opportunity Notice* and the *Initiation Notice*.

### C. Selection and Corroboration of Information Used as Facts Available

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to timely comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.<sup>29</sup> In selecting a rate based on AFA, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>30</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>31</sup> Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>32</sup> The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>33</sup>

Further, section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal, except that the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>34</sup>

As AFA, and pursuant to section 776(d) of the Act, we preliminarily assign to Griset and KME France weighted-average dumping margins of 42.24 percent, the highest rate found in the final less than fair value determination.<sup>35</sup> This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>36</sup>

The 42.24 percent rate is derived from the investigation, which is the only segment in the 28-year history of this order in which a rate was assigned.<sup>37</sup> Because we derived the AFA margin from a

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<sup>29</sup> See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

<sup>30</sup> See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007); see also *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>31</sup> See Preamble, 62 FR at 27340.

<sup>32</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>33</sup> See section 776(d)(3) of the Act; TPEA, section 502(3)section.

<sup>34</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>35</sup> See *Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip From France*, 52 FR 812 (January 9, 1987) (*Final LTFV*).

<sup>36</sup> See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).

<sup>37</sup> See *Brass Sheet and Strip From France, Italy, and Japan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders*, 76 FR 39849 (July 7, 2011) and accompanying Issues and Decision memorandum at 1-3 (“History of the Orders” section). Because this was an AFA rate derived from the petition in the investigation, the rate was not subject to the Department’s so-called “zeroing” methodology.

separate segment of this proceeding, the Department is not required to corroborate the dumping margin. This rate is consequently also the all-others rate.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

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Agree

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Disagree

*Paul Piquado*  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

*17 NOVEMBER 2015*  
\_\_\_\_\_  
Date