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Investigation
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DATE: November 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
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 France

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain carbon and alloy steel cut-to-length plate (CTL plate) from France 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 margins are 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 France,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

In the Initiation Notice, the Department stated that, although we normally rely on the number of producers/exporters identified in the petition and/or import data from U.S. Customs and Border

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 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).



Protection (CBP) to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioners identified only two companies in France: Dillinger France S.A. (Dillinger France) and Industeel France S.A. (Industeel France).³ Because we knew of no additional producers/exporters of merchandise under consideration from France and because the petitioners provided information from an independent third party source as support, we stated our intention to examine all known producers/exporters in France.⁴ We did not receive further comments from any party with regards to individual examination of known producers/exporters of subject merchandise.

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.⁵ 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 Austria, Belgium, Brazil, Germany, Italy, Japan, Korea, the People's Republic of China, South Africa, Taiwan, and Turkey.⁶

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 France.⁷

On May 31, 2016, the Department issued AD questionnaires to Dillinger France and Industeel France.

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.

³ See Initiation Notice, 81 FR at 27095.

⁴ Id.

⁵ Id., 81 FR at 27090, 27091.

⁶ For further discussion of these comments, see Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "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 Memorandum), and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "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).

⁷ 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.

In June 2016, Dillinger France and Industeel France submitted timely responses to section A of the Department's AD questionnaire, *i.e.*, the section relating to general information. In July 2016, Dillinger France and Industeel France responded to sections B, C, and D of the Department's AD questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively, and Dillinger France responded to section E of the AD questionnaire, *i.e.*, the section relating to further manufacture or assembly in the United States.

In August 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 preliminary determination until no later than November 4, 2016.⁸

From August 2016 through October 2016, we issued supplemental questionnaires to Dillinger France and Industeel France, and we received responses to these supplemental questionnaires in the same months.

On September 6, 2016, and October 13, 2016, the Department addressed the scope comments placed on the record of this investigation by interested parties.⁹

In October 2016, Industeel France and Dillinger France requested that the Department postpone the final determination, and Industeel France also requested that provisional measures be extended.¹⁰

On October 31, 2016, and November 3, 2016, respectively, we received responses to our final sales and cost supplemental questionnaires issued to Dillinger France. Finally, November 4, 2016, is the deadline for Industeel France to submit a response to the latest cost supplemental questionnaire. Because these responses were either received, or due, so close to the deadline for this preliminary determination, we did not use this information in our analysis in the preliminary determination. Instead, we intend to verify this information and consider it for purposes of the final determination.

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

⁸ 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).

⁹ See Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum, respectively.

¹⁰ See letter from Dillinger France entitled, "Certain Carbon and Alloy Steel Cut-To-Length Plate from France: Request for Extension of Final Determination," dated October 17, 2016 (Dillinger France Final Postponement Request); and Letter from Industeel France entitled, "Certain Carbon and Alloy Steel Cut-To-Length Plate from France: Request for Postponement of Final Determination," dated October 13, 2016 (Industeel France Final Postponement Request).

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 petition, which was April 2016.¹¹

IV. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations,¹² the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).¹³ 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.¹⁴ 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.

V. 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 Dillinger France's and Industeel France's sales of subject merchandise from France 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

¹¹ See 19 CFR 351.204(b)(1).

¹² See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

¹³ See Initiation Notice, 81 FR at 27090.

¹⁴ 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.

particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁵ 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 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 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 (CONNUM) 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.

¹⁵ 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).

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 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

Dillinger France

For Dillinger France, based on the results of the differential pricing analysis, the Department preliminarily finds that 89.13 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions,

¹⁶ See Memorandum to the File from Terre Keaton Stefanova, International Trade Compliance Analyst, entitled, “Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from France” dated November 4, 2016, (Dillinger France Preliminary Analysis Memorandum) at 2.

or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the average-to-average method and when 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-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Dillinger France.

Industeel France

For Industeel France, based on the results of the differential pricing analysis, the Department preliminarily finds that 49.94 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Industeel France.

VI. 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.¹⁸

Dillinger France reported the earlier of the invoice date or the shipment date as the date of sale for each of its home market and U.S. sales.¹⁹ Industeel France reported the invoice date as the date of sale for all home market and U.S. sales.²⁰ The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better

¹⁷ See Memorandum to the File from Brandon J. Custard, Senior International Trade Compliance Analyst, entitled, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from France" dated November 4, 2016 (Industeel France Preliminary Analysis Memorandum) at 2.

¹⁸ 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)).

¹⁹ See Dillinger France's Second Supplemental Response, dated October 21, 2016 (Dillinger Second Supplemental Response), at 12.

²⁰ See Industeel France's Section B response, dated July 15, 2016 (Industeel Section B Response), at 23; Industeel France's Section C response, dated July 15, 2016 (Industeel Section C Response), at 20-21.

reflects the date on which the material terms of sale are established.²¹ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale in both markets for both respondents, in accordance with our practice.²²

VII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents, Dillinger France and Industeel France, in France 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 or CV, as appropriate.

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.

VIII. EXPORT PRICE/CONSTRUCTED EXPORT PRICE

For all sales made by Industeel France and certain sales made by Dillinger France, we used EP methodology, in accordance with section 772(a) of the Act, for sales where 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 CEP methodology was not otherwise warranted. For Dillinger France’s remaining U.S. 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 EP methodology was not otherwise warranted.

Dillinger France

With respect to Dillinger France’s EP sales, we calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments. We also made deductions from the starting price, where appropriate, for movement expenses, i.e., foreign inland freight expenses and foreign brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

²¹ 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; 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.

²² Id.

For Dillinger France's CEP sales, we calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments. We also made deductions from the starting price, where appropriate, for movement expenses (*i.e.*, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees), and U.S. inland freight expenses (offset by freight revenue)) in accordance with section 772(c)(2)(A) of the Act. We capped freight revenue by the amount of U.S. inland freight expenses incurred on CEP sales, in accordance with our practice.²³ With respect to foreign inland freight expenses, we relied on the amounts reported in the field DINLFTPU, rather the amounts reported in the field DINLFTP2U, because the expenses reported in the former field appear to contain obvious errors.²⁴

In accordance with section 772(d)(1) of the Act, we also deducted selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*i.e.*, commissions, imputed credit expenses, and other direct selling expenses) and indirect selling expenses (*i.e.*, inventory carrying costs and other indirect selling expenses). We also made an adjustment to price for the cost of any further manufacturing or assembly, in accordance with section 772(d)(2) of the Act. 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 Dillinger France and its U.S. affiliate, Berg Steel Pipe Corporation (BSPC), on their sales of the subject merchandise in the United States and the profit associated with those sales.

Industeel France

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments and discounts. We also made deductions from the starting price, where appropriate, for movement expenses (*e.g.*, foreign inland freight expenses and foreign brokerage and handling expenses), in accordance with section 772(c)(2)(A) of the Act.

IX. 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,

²³ See, *e.g.*, Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

²⁴ For further discussion, see the Dillinger France Preliminary Analysis Memorandum.

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.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Dillinger France and Industeel France, in accordance with section 773(a)(1)(B) of the Act.

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

Dillinger France

During the POI, Dillinger France 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 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, we determined that the sales made to the affiliated party were at arm's length because 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).²⁵ 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.²⁶

With respect to Dillinger France, sales of foreign like product to its affiliated service center, Eurodecoupe SAS (EDC), failed the arm's-length test. Therefore, Dillinger France reported EDC's downstream sales, and we used the reported downstream sales data in our calculations for the preliminary determination. EDC further processed Dillinger France's CTL plate, resulting in changes to the model matching characteristics and CONNUM of the products sold. Because of gaps in EDC's reported downstream sales, for this preliminary determination we treated all of EDC's sales as being Dillinger France-produced CTL plate. We requested additional information from Dillinger France for consideration of these sales in the final determination. Further, in instances where Dillinger France only reported the CONNUM of the further-processed sale (and not the CONNUM of the Dillinger France-produced CTL plate), we assigned the Dillinger France-produced CTL plate the same CONNUM as that of the further processed merchandise.²⁷

²⁵ 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).

²⁶ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

²⁷ See Dillinger France Preliminary Analysis Memorandum, for further discussion of the details of these adjustments.

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 LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁹ 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 LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,³⁰ 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.³¹

When the Department is unable to match 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 a different LOT in the comparison market. In comparing EP or CEP sales to 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.³²

In this investigation, we obtained information from Dillinger France and Industeel France regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution.³³ Our LOT findings are summarized below.

²⁸ See 19 CFR 351.412(c)(2).

²⁹ *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).

³⁰ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³¹ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

³² See, e.g., OJ from Brazil, at Comment 7.

³³ See Dillinger France's Section A response, dated June 15, 2016 (Dillinger's Section A Response), at A-12 – A-17; Dillinger France's Supplemental Section A Response, dated September 2, 2016, at Exhibit SA-2; Dillinger France's Second Supplemental Sections A B C response, dated October 21, 2016; Industeel France's Section A response, dated June 15, 2016 (Industeel's Section A Response), at A-15 – A-26, and Exhibits A-6 and A-7; and Industeel France' Supplemental Sections B C response, dated September 19, 2016 (Industeel's Supplemental Sections B C response).

Dillinger France

In the home market, Dillinger France reported that it made sales through two channels of distribution, *i.e.*, factory sales on a made-to-order basis and sales made by an affiliated service center.^{34,35} Dillinger France stated that it performed the following selling functions for its made-to-order sales: advertising; direct sales personnel, sales promotion; freight and delivery arrangements; order input/processing; packing; commissions; rebates; sales forecasting, strategic/economic planning, market research; sales/marketing support; technical assistance, after-sales services, engineering services; guarantees/warranty services; and personnel training/exchange.³⁶ For sales by affiliated services centers, Dillinger France reported that, in addition to the selling functions listed above, the service centers performed inventory maintenance, but did not provide rebates or personnel training/exchange.³⁷

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 Dillinger France performed sales and marketing, freight and delivery services, and warranty and technical support for all of its home market sales, and its affiliated service centers also performed inventory maintenance for home market sales.³⁸ Because we find that there were no significant differences in selling activities performed by Dillinger France to sell to its home market customers, we determine that there is one LOT in the home market for Dillinger France.

With respect to the U.S. market, Dillinger France reported that it made sales through two channels of distribution: factory sales on a made-to-order basis and sales made by affiliated service centers. Dillinger France reported that it performed the following selling functions for its made-to-order sales to the United States: advertising; direct sales personnel, sales promotion; freight and delivery arrangements; order input/processing; packing; commissions; rebates; sales forecasting, strategic/economic planning, market research sales /marketing support; technical assistance, after-sales services, engineering services; and guarantees/warranty services.³⁹ For sales by affiliated services centers, Dillinger reported that it performed the following selling functions: order input/processing; packing; pay commissions; and guarantees/warranty services.⁴⁰ Further, although Dillinger France reported that it did not perform freight and

³⁴ See Dillinger's Section A Response at A-12 – A-14.

³⁵ While Dillinger France identified its home market sales of non-prime merchandise as a third channel of distribution, we note that Dillinger France did not report U.S. sales of non-prime merchandise. Therefore, these home market sales will not be used for comparison purposes in the Department's margin calculations and, as a result, we have not analyzed this channel of distribution.

³⁶ See Dillinger's Supplemental Section A Response at Appendix SA-2.

³⁷ Id.

³⁸ While Dillinger France reported performing inventory maintenance only for certain home market sales made by its affiliated service centers, we find that this difference alone is insufficient to find that Dillinger France's channel two sales in the home market are at a different level LOT.

³⁹ See Dillinger's Supplemental Section A Response at Appendix SA-2.

⁴⁰ Id.

delivery arrangements or employ direct sales personnel for affiliated service center sales, we note that its reported data indicates that it performed these activities.

Accordingly, based on the selling function categories noted above, we find that Dillinger France performed sales and marketing, freight and delivery services, and warranty and technical support for all of its reported U.S. sales. Because the selling functions performed for the two channels of trade do not differ significantly, such that we would consider these channels to be separate marketing stages, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Dillinger France performed for its U.S. and home market customers do not differ significantly. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

Industeel France

In the home market, Industeel France reported that it made sales through one channel of distribution, *i.e.*, direct sales to unaffiliated customers.⁴¹ According to Industeel France, it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion/trade shows/customer outreach; distributor/dealer training; packing/repacking; inventory maintenance; order input/processing; employment of direct sales personnel; sales/marketing support; market research; provision of technical assistance; provision of warranty claims and guarantees, after-sales services; post-sale warehousing; and freight and delivery services.⁴²

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 Industeel France performed sales and marketing, inventory maintenance and warehousing, freight and delivery, and warranty and technical support for all of its home market sales. Because we find that there were no significant differences in selling activities performed by Industeel France to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Industeel France.

With respect to the U.S. market, Industeel France reported that it made sales through two channels of distribution, *i.e.*, delivered and ex-factory sales to unaffiliated customers.⁴³ Industeel France reported that it performed the following selling functions for sales to all U.S. customers: strategic/economic planning; personnel training/exchange; engineering services; advertising; trade shows; distributor/dealer training; packing/repacking; inventory maintenance; order

⁴¹ See Industeel's Section A Response, at 17-24 and Exhibits A-6 and A-7; Industeel's Supplemental Sections B C reponse, at 9.

⁴² *Id.*

⁴³ *Id.*

input/processing; employment of direct sales personnel; sales/marketing support; market research; provision of technical assistance; provision of warranty claims, and guarantees.⁴⁴ Industeel reported freight and delivery services only for sales made on a delivered basis.⁴⁵

Accordingly, based on the selling function categories noted above, we find that Industeel France performed sales and marketing, inventory maintenance and warehousing, and warranty and technical support for all of its U.S. sales, and freight and delivery for the vast majority of U.S. sales. Because we find that there were no significant differences in selling activities performed by Industeel France to sell to its U.S. customers, we preliminarily determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Industeel France performed for its U.S. and home market customers do not differ significantly.⁴⁶ Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

D) *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 countervailing duty (CVD) law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than COP.⁴⁷ The 2015 law does not specify dates of application for those amendments.⁴⁸ 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.⁴⁹ 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, 2015.⁵⁰ It requires the Department to request CV and COP information from respondent companies in all AD proceedings.

Accordingly, the Department requested this information from Dillinger France and Industeel France. We examined Dillinger France'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. We also examined Industeel France's cost data and

⁴⁴ See Industeel's Section A Response, at 17-24 and Exhibits A-6 and A-7

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁴⁸ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petitions.

⁴⁹ 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).

⁵⁰ Id., 80 FR at 46794-95.

determined that additional information was necessary to determine whether our quarterly cost methodology is warranted. We requested this information from Industeel France, with a response due on November 4, 2016. Because this response is due on the date of this preliminary determination, we did not use this information in our analysis in the preliminary determination. Instead, we intend to verify information received in Industeel France's response and consider it for purposes of the final determination. For the preliminary determination, we applied our standard methodology of using annual costs based on Industeel France's 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 (G&A) expenses and interest expenses.

We relied on the COP data submitted by the respondents, except as follows:⁵¹

Industeel France

- We adjusted the cost of inputs Industeel France purchased from affiliated suppliers to reflect arm's length prices for these transactions;
- We adjusted the financial expense ratio to exclude only short-term interest income from the numerator of the calculation; and
- For CONNUMs reported in the U.S. and home market data files for which Industeel France did not provide cost information, we used the CONNUM with the highest cost that was sold during the POI as a surrogate.

Dillinger France

- We adjusted the cost of steel slab Dillinger France purchased from its parent company to reflect arm's length prices for these transactions;
- We adjusted the reported cost of Dillinger France's non-prime CONNUMs to reflect the values recorded in the company's normal books and records, and then re-allocated the cost difference to prime CONNUMs;
- We adjusted Dillinger France's reported per-unit costs to reflect the theoretical production quantity of each CONNUM;

⁵¹ See Memorandum from James J. Balog, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Industeel France S.A.," dated November 4, 2016. See also Memorandum from Robert Greger, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Dillinger France S.A.," dated November 4, 2016.

- We revised Dillinger France’s G&A expense ratio to include social contributions and net provisions;
- We revised the scrap offset reported in BSPC’s further manufacturing file to eliminate double-counting and to reflect the scrap quantities generated during the POI, rather than the scrap quantities sold;
- We adjusted the denominator of BSPC’s G&A expense ratio to exclude outbound freight costs and to include the adjusted total scrap offset;
- We revised BSPC’s financial expense ratio to reflect the results of Europipe GmbH, the highest-level consolidated financial statements in which BSPC’s results are included; and
- We revised BSPC’s reported G&A expenses and financial expenses by applying the respective ratios to the adjusted further manufacturing costs of each product, plus the COP of the underlying CTL plate.

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. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

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 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.

We found that, for certain products, more than 20 percent of Dillinger France's and Industeel France'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.

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

Dillinger France

We calculated NV based on delivered prices to unaffiliated customers. 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 a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

We deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, commissions and credit expenses and added U.S. direct selling expense, *i.e.*, commissions and credit expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. Furthermore, we made additional adjustments to certain data in Dillinger France's home market sales database because of inconsistencies in the data.⁵²

For comparisons to CEP sales, we deducted home market credit expenses and commissions, pursuant to 773(a)(6)(C) of the Act. We capped our deduction for home market commissions by the amount of U.S. indirect selling expenses.⁵³

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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.⁵⁴

⁵² See Dillinger France Preliminary Analysis Memorandum for further discussion of these adjustments.

⁵³ See 19 CFR 351.410(e).

⁵⁴ *Id.*

Industeel France

We calculated NV based on delivered prices to unaffiliated customers. 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 a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

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. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales *i.e.*, commissions and credit expenses and added U.S. direct selling expenses *i.e.*, credit expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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.⁵⁵

F) *Price-to-Constructed Value Comparisons*

For Industeel France, where we were unable to find a home market match of identical or similar merchandise, we based normal value on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent’s material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the “Calculation of Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Industeel France in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

For comparisons to Industeel France’s EP sales, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We also made a commission offset, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other.

⁵⁵ See 19 CFR 351.411(b).

X. 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.

XI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 NOVEMBER 2016
Date