



A-428-602  
Administrative Review  
POR: 03/01/13 - 02/28/14  
Public Document  
AD/CVD: OIII: GM

March 31, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman   
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the  
Antidumping Duty Administrative Review: Brass Sheet and Strip  
from Germany; 2013-2014

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## SUMMARY

In response to a request from the petitioners,<sup>1</sup> the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order<sup>2</sup> on brass sheet and strip from Germany, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). This review covers ten companies.<sup>3</sup> The period of review (POR) is March 1, 2013, through February 28, 2014. We preliminarily find that subject merchandise has been sold at less than normal value by the following seven companies subject to this review: Aurubis Stolberg GmbH & Co. KG, Carl Schreiber GmbH, KME Germany AG & Co. KG, Messingwerk, MKM Mansfelder Kupfer & Messing GmbH, Schlenk Metallfolien GmbH & Co. KG, and Sundwiger Messingwerke GmbH & Co. KG.

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<sup>1</sup> The Petitioners include GBC Metals, LLC of Global Brass and Copper, Inc., dba Olin Brass, Heyco Metals, Inc., Aurubis Buffalo, Inc. PMX Industries, Inc. and Revere Copper Products, Inc.

<sup>2</sup> See *Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987), as amended, *Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip From Germany*, 52 FR 35750 (April 8, 1987) (*Order*).

<sup>3</sup> The ten companies include: Aurubis Stolberg GmbH & Co. KG, Carl Schreiber GmbH, KME Germany AG & Co. KG, Messingwerk Plettenberg Herfeld GmbH & Co. KG (Messingwerk), MKM Mansfelder Kupfer & Messing GmbH, Schlenk Metallfolien GmbH & Co. KG, Schwermetal Halbzeugwerk GmbH & Co. KG (Schwermetal), Sundwiger Messingwerke GmbH & Co. KG, ThyssenKrupp VDM GmbH (ThyssenKrupp), and Wieland-Werke AG (Wieland).



## BACKGROUND

On April 8, 1987, the Department published the *Order*,<sup>4</sup> as amended, in the *Federal Register*. On April 30, 2014, the Department published in the *Federal Register* a notice of initiation listing the firms for which timely requests for an administrative review of the applicable antidumping duty order were submitted.<sup>5</sup> Since the initiation of this review, we selected Messingwerk Plettenberg Herfeld GmbH & Co. KG (Messingwerk) for individual examination.<sup>6</sup> On May 5, 2014, Wieland-Werke AG and Schwermetall Halbzeugwerk GmbH & Co. KG submitted non-shipment claims.<sup>7</sup> On July 3, 2014, the Department placed U.S. entry documents on the record of the instant review pursuant to the Department's request for such documentation made on May 8, 2014.<sup>8</sup>

On June 25, 2014, the Department received a no shipment claim for VDM Metals GmbH.<sup>9</sup> Specifically, this letter states that ThyssenKrupp VDM GmbH changed its name to Outokumpu VDM GmbH, effective January 25, 2013, and subsequently changed its name to VDM Metals GmbH, effective April 14, 2014.<sup>10</sup> Based on the letter of June 25<sup>th</sup>, which identified the three aforementioned corporate names reportedly referring to ThyssenKrupp, the Department revised its Customs and Border Protection (CBP) data query to include these three corporate names.<sup>11</sup> The Department received the CBP data query results based on the revised CBP data query and placed this information on the record of this review.<sup>12</sup> We received no comments from interested parties regarding ThyssenKrupp based on the revised CBP data query results.

## SCOPE OF THE ORDER

The scope of the order covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000; this review does not cover products the chemical compositions of which are defined by other CDA or UNS series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8

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<sup>4</sup> See *Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987), as amended, *Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip From Germany*, 52 FR 35750 (April 8, 1987).

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 24398 (April 30, 2014) (*Initiation*).

<sup>6</sup> See Memorandum titled "Brass Sheet and Strip from Germany, Antidumping Duty Administrative Review, 2013-2014: Selection of Respondents for Individual Examination," dated May 13, 2014 (Respondent Selection Memorandum).

<sup>7</sup> See Letters from Schwermetall Halbzeugwerk GmbH & Co. KG and Wieland-Werke AG titled "Brass Sheet and Strip from Germany, 2013/14 Review: Notice of No Sales," dated May 5, 2014.

<sup>8</sup> See Memorandum titled "Request for U.S. Entry Documents – Brass Sheet & Strip from Germany (A-428-602)," dated May 8, 2014.

<sup>9</sup> See Letter titled, "Brass Sheet and Strip from Germany (2013-14 Review) – No Shipment Letter for VDM Metals GmbH (Formerly ThyssenKrupp VDM GmbH)," dated June 25, 2014.

<sup>10</sup> *Id.*, at page 1.

<sup>11</sup> See Memorandum to the File titled, "Customs and Border Protection Data Query Results based on Revised Query," dated July 10, 2014, at Attachment 2.

<sup>12</sup> *Id.*, at Attachment 1.

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 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.0090. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive.

## **DISCUSSION OF THE METHODOLOGY**

### Selection of Respondents

Due to the large number of companies for which the Department initiated this administrative review, the Department exercised its authority to limit the number of respondents selected for individual examination. Where it is not practicable to examine all known exporters and producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act allows the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

Accordingly, based on our analysis of U.S. Customs and Border Protection (CBP) import data on the record of this review and our available resources, we selected Messingwerk for individual examination.<sup>13</sup>

### No Shipment Claims by Schwermetall, ThyssenKrupp, and Wieland

#### A. Schwermetall

On May 5, 2014, Schwermetall submitted a non-shipment claim.<sup>14</sup> On July 19, 2014, we issued to CBP a confirmation of non-shipment inquiry as a means of confirming the no-shipment claim from Schwermetall. We did not receive any contradictory information from CBP pursuant to this instruction. Accordingly, based on Schwermetall's certified statement of no shipments and confirmation of that claim by CBP data, we preliminarily determine that Schwermetall had no sales to the United States during the POR.

#### B. ThyssenKrupp

On June 25, 2014, the Department received a non-shipment claim for ThyssenKrupp, now referred to as VDM Metals GmbH.<sup>15</sup> The submitted no shipment letter states that ThyssenKrupp VDM GmbH changed its name to Outokumpu VDM GmbH, effective January 25, 2013, and

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<sup>13</sup> *Id.*; see also Respondent Selection Memorandum.

<sup>14</sup> See Letters from Schwermetall titled "Brass Sheet and Strip from Germany, 2013/14 Review: Notice of No Sales," dated May 5, 2014.

<sup>15</sup> See Letter titled, "Brass Sheet and Strip from Germany (2013-14 Review) – No Shipment Letter for VDM Metals GmbH (Formerly ThyssenKrupp VDM GmbH)," dated June 25, 2014.

subsequently changed its name to VDM Metals GmbH, effective April 14, 2014.<sup>16</sup> On July 15, 2014, we issued to CBP a confirmation of non-shipment inquiry based on the three reported names for ThyssenKrupp as a means of confirming the no-shipment claim from ThyssenKrupp. We did not receive any contradictory information from CBP pursuant to these confirmation instructions. Accordingly, based on ThyssenKrupp's assertion of no shipments and confirmation of that claim by CBP data, we preliminarily determine that ThyssenKrupp had no sales to the United States during the POR.

### C. Wieland

On May 5, 2014, Wieland submitted a non-shipment claim.<sup>17</sup> On May 15, 2014, Wieland submitted its initial comments regarding the Department's use of CBP data, specifically as it relates to Wieland's certification of its no shipment claim. Wieland asserts that any entries contained in the CBP import data and reported under Wieland's antidumping code and/or identifying Wieland as the manufacturer likely reflect shipments to the U.S., by resellers, made without Wieland's knowledge or participation.<sup>18</sup> Based on the CBP data query results which identified certain information regarding Wieland, the Department issued a request for U.S. entry documentation to confirm Wieland's no-shipment claim.<sup>19</sup> On June 26, 2014, the Department placed U.S. entry documentation received from CBP on the record of this review and invited interested parties to submit comments.<sup>20</sup> On July 11, 2014, Wieland submitted comments on the U.S. entry documentation as they relate to Wieland's claim of no sales, exports, or entries during the POR.<sup>21</sup> We did not receive any comments from the Petitioners in response to Wieland's July 11<sup>th</sup> Comments.

With regard to Schwermetall, ThyssenKrupp, and Wieland's claims of no shipments, our practice since implementation of the 1997 regulations concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.<sup>22</sup> As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

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<sup>16</sup> *Id.*, at page 1. For purposes of this review, we have referred to the three corporate names, ThyssenKrupp VDM GmbH, Outokumpu VDM GmbH, and VDM Metals GmbH as ThyssenKrupp. We are not addressing these corporate name changes in the context of this review because this company is not a mandatory respondent, has reported no shipments, and has not requested that a Changed Circumstances Review be conducted.

<sup>17</sup> See Letters from Wieland titled "Brass Sheet and Strip from Germany, 2013/14 Review: Notice of No Sales," dated May 5, 2014.

<sup>18</sup> See Wieland's submission titled, "Comments on CBP Data," dated May 14, 2014.

<sup>19</sup> See Memorandum titled "Request for U.S. Entry Documents – Brass Sheet & Strip from Germany (A-428-602)", dated May 8, 2014.

<sup>20</sup> See Memorandum titled, "Customs and Border Protection Data Query Results based on Revised Query," dated July 3, 2014.

<sup>21</sup> See Wieland's submission titled, "Comments on CBP Entry Documents," dated July 11, 2014.

<sup>22</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 95 (January 3, 2006).

In our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.<sup>23</sup>

Based on Schwermetall, ThyssenKrupp, and Wieland’s assertion of no shipments and confirmation of that claim by CBP data, we preliminarily determine that Schwermetall, ThyssenKrupp, and Wieland had no sales to the United States during the POR. Because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Schwermetall, ThyssenKrupp, or Wieland and exported by other parties at the all others rate should we continue to find at the time of our final results that Schwermetall, ThyssenKrupp, and Wieland had no shipments of subject merchandise from Germany.<sup>24</sup> In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Schwermetall, ThyssenKrupp, and Wieland and issue appropriate instructions to CBP based on the final results of the review. See the “Assessment Rates” section of the accompanying *Federal Register* notice for additional detail.

#### Use of Facts Otherwise Available

In accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we determine that the use of adverse facts available (AFA) is appropriate for these preliminary results with respect to Messingwerk, the sole company selected for individual examination in this review. Thus, for the reasons discussed below, we preliminarily assign a dumping margin of 55.60 percent to Messingwerk.

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

On May 19, 2014, the Department issued its initial antidumping duty questionnaire to Messingwerk. On May 22, 2014, Messingwerk confirmed receipt of the initial questionnaire.<sup>25</sup> On May 30, 2014, Messingwerk submitted a letter expressing its position regarding the Department’s selection of Messingwerk as a mandatory respondent in this review.<sup>26</sup> Specifically, Messingwerk outlined the declining sales trend of its sales to the United States, and stated Messingwerk’s percentage share of its series 2000 brass strip sales. Furthermore, Messingwerk indicated that it did not have the resources necessary to respond to the Department’s questionnaire.<sup>27</sup> On June 6, 2014, the Department issued a letter to Messingwerk which outlined

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<sup>23</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>24</sup> See, e.g., *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008).

<sup>25</sup> See Memorandum to the File titled, “Confirmation of Delivery of Initial Questionnaire to Messingwerk Plettenberg Herflod GmbH & Co. KG (Plettenberg),” dated May 22, 2014.

<sup>26</sup> Messingwerk’s letter of May 30, 2014 was properly filed via ACCESS, the Department’s electronic document filing system, which confirms that Messingwerk was aware of the filing requirements and the process by which to properly file a submission with the Department.

<sup>27</sup> See Messingwerk’s letter dated May 30, 2014, at 1.

the requirements of this administrative review, described the importance of participating in this review, and invited Messingwerk to submit an extension request to provide it with additional time to respond to the questionnaire.<sup>28</sup> The Department did not receive any response to its letter of June 6<sup>th</sup>.

Section 776(a)(1) of the Act states that the Department “shall” use the facts otherwise available if necessary information is not available on the record. Further, section 776(a)(2) of the Act provides that the Department “shall” use facts available if it determines that an interested party withholds information requested by the Department, fails to provide such information by the deadlines for submission of the information or in the form and manner requested by the Department, significantly impedes a proceeding, or provides such information but the information cannot be verified. In this case, Messingwerk withheld requested information, failed to provide requested information by the established deadlines, and significantly impeded this proceeding. Accordingly, the use of facts available is warranted in determining a dumping margin for Messingwerk.

Based on these circumstances, we preliminarily find that Messingwerk has failed to provide the Department with the information necessary to conduct an administrative review of the company, thereby warranting the use of facts otherwise available pursuant to sections 776(a) 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>29</sup> The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>30</sup> In addition, the SAA 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>31</sup>

The Department confirmed that Messingwerk received the initial questionnaire within three days of its issuance and invited Messingwerk to submit an extension request to provide it with

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<sup>28</sup> See Letter to Messingwerke titled, “Reply to Messingwerk Plettenberg Herfeld GmbH & Co. KG’s letter of May 30, 2014,” dated June 6, 2014.

<sup>29</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *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>30</sup> See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

<sup>31</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1 at 879, 103d Cong. (1994), reprinted in 1994 U.S.C.C.A.N. 37773, 4163SAA at 870 (SAA); see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

additional time to respond to the questionnaire. Messingwerk failed to respond to the Department's questionnaire and failed to request an extension of time to respond. The failure of Messingwerk to respond to the delivered questionnaire demonstrates a failure to cooperate by this producer/exporter of merchandise to the United States. We have, therefore, preliminarily determined that Messingwerk failed to cooperate to the best of its ability in providing the necessary information for the Department to conduct an administrative review. Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.<sup>32</sup>

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

Where the Department applies AFA because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.<sup>33</sup> As AFA, we preliminarily assign to Messingwerk the dumping margin of 55.60 percent, a rate from the petition relied on for purposes of initiating the investigation.<sup>34</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>35</sup> The Department has previously applied an AFA rate of 16.18 percent to certain respondents in prior segments of the proceeding.<sup>36</sup> The rate of 16.18 percent was based on the original investigation and relied on the zeroing methodology, which is no longer used by the Department based on the *Final Modification*.<sup>37</sup>

When a respondent is not cooperative, such as Messingwerk in this review, the Department has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.<sup>38</sup> If this was not the case, the party would have produced current information showing its rate to be less.<sup>39</sup> Further, by using the highest prior dumping margin that can be corroborated, we offer the assurance that the exporter will not benefit from refusing to provide information.

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. 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

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<sup>32</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (where the Department applied total AFA because the respondent failed to respond to the questionnaire).

<sup>33</sup> See also 19 CFR 351.308(c) and SAA, at 868-870.

<sup>34</sup> See *Brass Sheet and Strip From The Federal Republic of Germany; Initiation of Antidumping Duty Investigation*, 51 FR 11774 (April 7, 1986).

<sup>35</sup> See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).

<sup>36</sup> See, e.g., *Order*.

<sup>37</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

<sup>38</sup> See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

<sup>39</sup> See *Rhone Poulenc*, 899 F.2d at 1190.

previous review under section 751 concerning the subject merchandise.”<sup>40</sup> As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>41</sup> To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.<sup>42</sup> As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information.<sup>43</sup> Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review.<sup>44</sup>

The 55.60 percent rate is derived from the petition in the investigation. Specifically, the petitioners calculated a range of margins based on actual sales or offers of sale of German brass sheet and strip to the United States. Petitioners demonstrated their methodology in the petition to support the margins ranging from 2.71 to 63.14 percent.<sup>45</sup>

Messingwerk has not been individually examined in a prior segment of this proceeding. Therefore, the Department examined rates calculated in the most recent proceedings to determine whether data is available for corroboration of the petition margin of 55.60 percent used as AFA in the instant review. Even though the order was issued in 1987, there have been very few administrative reviews of the order. The most recently conducted review examined Wieland in the 2008/2009 POR, but was based on a single U.S. sale transaction with a *de minimis* margin calculated. We do not consider the information from the 2008/2009 review relevant for corroboration of the petition rate because it is the Department’s practice not to rely on a *de minimis* rate for purposes of corroborating an AFA rate. In the prior reviews of Wieland for the 1997/1998 and 1996/1997 PORs, the Department relied on the AFA rate of 16.18 percent which relied on the zeroing methodology, therefore, we are unable to rely on the net margins from these reviews for corroboration of the petition rate. Because those rates were based on AFA, there is no transaction-specific margin data available from those reviews for corroboration purposes.

The only other available data is from the 1991/1992 POR and the 1992/1993 POR which include positive transaction-specific calculated margins.<sup>46</sup> These rates from these reviews are transaction-specific, thus, such transactions are not impacted by the Department’s prior zeroing methodology. This data represents a set of calculated rates for a German producer of subject merchandise. The petition rate of 55.60 percent falls within the range of transactions for the 1991/1992 POR. As a result, we find the 55.60 percent margin to be corroborated “to the extent

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<sup>40</sup> See SAA, at 870.

<sup>41</sup> *Id.*

<sup>42</sup> See *Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 2511 (January 15, 2009) and accompanying Issues and Decision Memorandum at, page 8.

<sup>43</sup> See SAA, at 869.

<sup>44</sup> See 19 CFR 351.308(d); SAA, at 870.

<sup>45</sup> See Memorandum from George McMahon, Case Analyst, to the file, titled “Brass Sheet and Strip from Germany: Preliminary Results Calculation Memorandum” at, Attachment 1, dated March 31, 2015 (Calculation Memorandum for Messingwerk).

<sup>46</sup> *Id.*

practicable.”<sup>47</sup> Messingwerk provided the Department with no company-specific commercial information and thus, no information has been presented in the current review that calls into question the relevance or reliability of the petition rate. We therefore preliminarily determine that the AFA rate is preliminarily corroborated for purposes of this administrative review.

#### Rate for Non-Examined Companies

The statute and the Department’s regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department’s practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to all-other respondents.

In this review, we determined a dumping margin for Messingwerk, the sole company that we selected for individual examination, entirely on the basis of AFA. In previous cases, the Department determined that a “reasonable method” to use when, as here, the rate of the respondent selected for individual examination is based on AFA, is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior administrative review).<sup>48</sup> If any such non-examined company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department applied such an individual rate to the non-examined company in the review in question, including when that rate is zero or *de minimis*.<sup>49</sup>

As referenced above, the most recent reviews of the brass sheet and strip from Germany order were based on either a *de minimis* rate or an AFA rate. Therefore, we have applied a methodology that is consistent with our reliance on the petition margins in this review. Specifically, in accordance with our practice, we determine that a reasonable method for establishing the dumping margin for companies not selected for individual examination in this review is to apply a rate calculated based on the average of the petition margins that constitute the range of margins up to the highest corroborated margin, which is 22.61 percent.<sup>50</sup>

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<sup>47</sup> See section 776(c) of the Act; SAA, at 870; 19 CFR 351.308(d).

<sup>48</sup> See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at comment 16.

<sup>49</sup> *Id.*

<sup>50</sup> See Calculation Memorandum for Messingwerk.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results. If this recommendation is accepted, we will publish the preliminary results and the preliminary dumping margins in the *Federal Register*.

Agree   ✓                        Disagree                   

                    
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

31 MARCH 2015  
(date)