



A-428-602
Administrative Review
POR: 03/01/14 - 02/28/15
Public Document
AD/CVD: OIII: GM

April 4, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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; 2014-2015

SUMMARY

In response to a request from the petitioners,¹ the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order² 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.³ The period of review (POR) is March 1, 2014, through February 28, 2015. 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.

BACKGROUND

On April 8, 1987, the Department published the *Order*,⁴ as amended, in the *Federal Register*.

¹ The Petitioners are 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.

² 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*).

³ The ten companies are: 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, Schwermetall Halbzeugwerk GmbH & Co. KG (Schwermetall), Sundwiger Messingwerke GmbH & Co. KG, ThyssenKrupp VDM GmbH (ThyssenKrupp), and Wieland-Werke AG (Wieland).

⁴ 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*



On April 30, 2015, 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.⁵ Since the initiation of this review, we selected Messingwerk Plettenberg Herfeld GmbH & Co. KG (Messingwerk) for individual examination.⁶ On May 4, 2015, the Department placed on the record Customs and Border Protection (CBP) data for the selection of respondents and invited interested parties to comment.⁷ On May 12, 13, and 19, 2015, respectively, ThyssenKrupp,⁸ Wieland⁹ and Schwermetall submitted non-shipment claims.¹⁰ On August 17, 2015, the Department placed U.S. entry documents on the record of this review pursuant to the Department's request for such documentation made on May 29, 2015.¹¹ We received comments from Wieland regarding the U.S. entry documents as discussed below. On November 16, 2015, the Department extended the deadline for these preliminary results until March 30, 2016, and then again until April 5, 2016.¹²

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 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.

Order: Brass Sheet and Strip From Germany, 52 FR 35750 (April 8, 1987).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 24233 (April 30, 2015) (*Initiation*).

⁶ See Memorandum titled "Brass Sheet and Strip from Germany, Antidumping Duty Administrative Review, 2014-2015: Selection of Respondents for Individual Examination," dated June 5, 2015 (Respondent Selection Memorandum).

⁷ See Memorandum titled, "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated May 4, 2015 (CBP Data Memo).

⁸ See Letter titled, "Brass Sheet and Strip from Germany (2014-15 Review) – No Shipment Letter for VDM Metals GmbH (Formerly ThyssenKrupp VDM GmbH)," dated May 12, 2015.

⁹ See Wieland's No-Shipment Letter dated May 13, 2015.

¹⁰ See No-Shipment Letters from ThyssenKrupp, Wieland and Schwermetall," dated May 12, 13, and 19, 2015, respectively.

¹¹ See Memorandum titled "Placement of U.S. Entry Documents on the Record" dated August 17, 2015 (CBP Entry Documents Memo); see also Memorandum titled, "Request for U.S. Entry Documents – Brass Sheet & Strip from Germany (A-428-602)," dated May 29, 2015.

¹² See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

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 which shows that Messingwerk accounts for an overwhelming majority of the volume of shipments of subject merchandise to the United States and our available resources, we selected Messingwerk for individual examination.¹³

No-Shipment Claims by Schwermetall, ThyssenKrupp, and Wieland

A. Schwermetall

On May 19, 2015, Schwermetall submitted a no-shipment claim.¹⁴ On May 21, 2015, we issued to CBP a confirmation of non-shipment inquiry as a means of confirming the no-shipment claim from Schwermetall.¹⁵ We did not receive any contradictory information from CBP pursuant to this inquiry. 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 reviewable sales to the United States during the POR.

B. ThyssenKrupp

On May 12, 2015, the Department received a non-shipment claim for ThyssenKrupp, now referred to as VDM Metals GmbH.¹⁶ The submitted no shipment 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, 2014.¹⁷ On May 21, 2015, we issued to CBP a confirmation of non-shipment inquiry based on the three reported

¹³ See Respondent Selection Memorandum.

¹⁴ See Letters from Schwermetall titled "Brass Sheet and Strip from Germany, 2014/15 Review: Notice of No Sales," dated May 19, 2015.

¹⁵ See CBP Message number: 5141314 (May 21, 2015).

¹⁶ See Letter titled, "Brass Sheet and Strip from Germany (2014-15 Review) – No Shipment Letter for VDM Metals GmbH (Formerly ThyssenKrupp VDM GmbH)," dated May 12, 2015.

¹⁷ *Id.*, at 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.

names for ThyssenKrupp as a means of confirming the no-shipment claim from ThyssenKrupp.¹⁸ We did not receive any contradictory information from CBP pursuant to these confirmation inquiries. Accordingly, based on ThyssenKrupp's assertion of no shipments and confirmation of that claim by CBP data, we preliminarily determine that ThyssenKrupp had no reviewable sales to the United States during the POR.

C. Wieland

On May 13, 2015, Wieland submitted a non-shipment claim and its initial comments regarding the CBP Data Memo.¹⁹ Specifically, Wieland reports that it made one entry through its U.S. affiliate Wieland Metals Inc. during the POR of a pure copper profile product that its customs broker erroneously classified as a copper-zinc alloy (brass) flat product subject to the Order. Wieland reports that "the broker not only used the wrong tariff classification, and erroneously declared the importation as subject to antidumping duties, but also used the incorrect antidumping code for Wieland, and paid antidumping duties at the 7.30 percent all others rate, rather than Wieland's zero percent deposit rate. Wieland Metals caught the errors, advised its broker, and the broker corrected the entry through a Post Entry Adjustment (PEA) filing."²⁰

In Wieland's May 13 Comments, it submitted the following documentation to clarify the facts regarding its entry which was reported in the CBP Data Memo: 1) the original entry summary which identifies the merchandise manufactured by Wieland and the net quantity of the shipment, 2) erroneous tariff classification, and the erroneous antidumping code number, 3) the amount of antidumping duties erroneously paid by Wieland Metals, 4) Wieland's commercial invoice for this entry which demonstrates that the importation involved a pure copper product, and not brass, and indicates that the product was a drawn product, and not a sheet or strip product 5) the material description which indicates a drawing number for the product, 6) schematic drawing for the product referenced in the invoice, which shows that this was not a flat rolled, sheet or strip, product, 7) the corrected entry filed by the broker, with a revised tariff classification, product description, showing no antidumping duties required for this entry of merchandise not subject to the Order, and 8) the post-entry adjustment filed by the broker which shows that the importation was not subject to the antidumping duty order. Wieland asserts that, because this entry did not involve merchandise subject to the antidumping duty order, the Department should not include it in any respondent selection analysis. Further, Wieland states that the Department should evaluate Wieland's no shipments certification with consideration of the aforementioned documents.

On August 21, 2015, Wieland submitted additional comments regarding the CBP Entry Documents Memo, specifically as it relates to Wieland's certification of its no shipment claim. Wieland asserts that "none of the entry documents detracts from Wieland's certified claim that Wieland had no sales, exports, or entries into the United States of subject brass sheet and strip during the POR. As in prior years, the documents show a small number of U.S. shipments by unaffiliated German resellers. The documents do not establish that Wieland knew or should have

¹⁸ See CBP Message number: 5141310 (May 21, 2015).

¹⁹ See Letter from Wieland titled "Brass Sheet and Strip from Germany, 2014/15 Review: Comments on CBP Data for Respondent Selection And Notification of No Shipments," dated May 13, 2015 (Wieland's May 13th Comments).

²⁰ *Id.* at 2.

known at the time of its sale to the reseller that the merchandise was destined to the United States. The Department should conclude, as it has in prior reviews, that there is no evidence of any export, sale, or entry of subject merchandise by Wieland during the POR.”²¹

We did not receive any comments from the Petitioners in response to Wieland’s May 13 and August 21 Comments. We have considered the customs documentation, the detailed information reported by Wieland regarding the entries at issue, including the PEA filing. Based on our analysis of this information, we preliminarily find that Wieland’s entry at issue contains merchandise not subject to the antidumping duty order of brass sheet and strip from Germany. Accordingly, we preliminarily determine that Wieland had no reviewable sales of subject merchandise to the United States during the POR.

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. Following our long-standing practice, we find it appropriate 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 they had no shipments of subject merchandise from Germany.²² 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 June 8, 2015, the Department issued its initial antidumping duty questionnaire to Messingwerk. On June 12, 2015, Messingwerk confirmed receipt of the initial questionnaire.²³ On June 26, 2015, Messingwerk submitted a letter which outlined certain sales figures regarding its series 2000 brass strip sales and indicated that it did not have the resources necessary to respond to the Department’s questionnaire.²⁴ Messingwerk did not request an extension of time to submit a questionnaire response and did not submit any additional information.

On November 13, 2015, the Department placed on the record the calculation memorandum from the *Preliminary Results*²⁵ of the prior antidumping duty administrative review and the data which

²¹ See Wieland’s submission titled, “Comments on CBP Entry Data,” dated August 21, 2015 at 2.

²² See, e.g., *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008).

²³ See Memorandum to the File titled, “Confirmation of Delivery of Initial Questionnaire to Messingwerk Plettenberg Herfeld GmbH & Co. KG (Plettenberg),” dated June 12, 2015.

²⁴ See Messingwerk’s letter dated June 26, 2015.

²⁵ See *Brass Sheet and Strip From Germany: Preliminary Results of Antidumping Duty Administrative Review and*

we relied on for purposes of corroboration of the petition margins used to assign rates to the sole mandatory respondent, Messingwerk Plettenberg Herfeld GmbH & Co. KG, and the non-examined companies in the 2013-14 administrative review²⁶ of the antidumping duty order of brass sheet and strip from Germany. We invited interested parties to submit comments but no comments were received by the Department.²⁷

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.²⁸ 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.”²⁹ In addition, the SAA provides that the Department may employ an adverse inference “to ensure that the party does

Preliminary Determination of No Shipments; 2013–2014, 80 FR 18357 (April 6, 2015), and accompanying Decision Memorandum (*Preliminary Results*); unchanged in the *Final Results*; see also *Brass Sheet and Strip From Germany: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 80 FR 61369 (October 13, 2015), and accompanying Issues and Decision Memorandum (*Final Results*).

²⁶ *Id.*

²⁷ See Memorandum to the File titled, “Transfer of Documentation to the Case Record of this Review,”

²⁸ 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).

²⁹ See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁰

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 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.³¹

C. Selection and Corroboration of Information Used as Facts Available

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.³² The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.³³

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, 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. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.³⁴

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. Secondary information is defined as information derived from the petition that gave

³⁰ 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.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).

³¹ 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).

³² 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*).

³³ *Id.*

³⁴ See also 19 CFR 351.308(c) and SAA at 868-870.

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. However, pursuant to section 776(c)(2) as amended by the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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. 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.

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.³⁵ This rate was applied to a company in the prior administrative review of the Brass Sheet and Strip from Germany antidumping duty order.³⁶ According to 776(c)(2) of the Act, as amended by the TPEA, this rate does not require corroboration. 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.³⁷

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).³⁸ If any such non-examined company had its own calculated rate that is

³⁵ See *Brass Sheet and Strip From The Federal Republic of Germany; Initiation of Antidumping Duty Investigation*, 51 FR 11774 (April 7, 1986).

³⁶ See *Final Results*.

³⁷ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).

³⁸ 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.

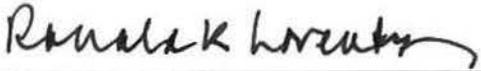
contemporaneous with or more recent than such prior determined rates, however, the Department applied such an individual rate to the non-examined company in the review in question, including when that rate is zero or *de minimis*.⁴¹

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. The average of the petition margins that constitute the range of margins up to the highest corroborated margin is 22.61 percent.⁴²

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



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 4, 2016
(date)

⁴¹ *Id.*

⁴² See Calculation Memorandum for Messingwerk.