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March 31, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

SUMMARY

In response to a request from GBC Metals, LLC of Global Brass and Copper, Inc., dba Olin Brass, Heyco Metals, Inc., Arubuis Buffalo, Inc., PMX Industries, Inc., and Revere Copper Products, Inc. (collectively, the petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from Italy,¹ pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). This review covers one company. The period of review (POR) is March 1, 2013, through February 28, 2014.

BACKGROUND

On March 3, 2014, the Department published an opportunity to request an administrative review in the above referenced proceeding.² On March 31, 2014, the petitioners requested an administrative review of KME Italy SpA (KME Italy).³ Based on the petitioners' request, we initiated an administrative review of KME Italy and released Customs and Border Protection data.⁴ On May 15, 2014, we issued the Department's antidumping questionnaire to KME Italy.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 24398 (April 30, 2014).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 79 FR 11757 (March 3, 2014).

³ See the petitioners' memorandum, "Brass Sheet and Strip from Italy," dated March 31, 2014, and the petitioners' description of KME Italy as "previously known as Europa Metalli SpA, which was previously known as La Metalli Industriale SpA.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 24398 (April 30, 2014); see also memorandum from Joseph Shuler, International Trade Analyst, to the File, "Release of Customs and Border Protection (CBP) Data," May 9, 2014.



On August 12, 2014, we received notification from KME Italy that it would not respond to our questionnaire.⁵

SCOPE OF THE ORDER

This order covers shipments of brass sheet and strip, other than leaded and tinned, from Italy. 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 with chemical compositions that are defined by anything other than either the CDA or UNS series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 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 (HTS) 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.

The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

DISCUSSION OF THE METHODOLOGY

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 KME Italy. Thus, for the reasons discussed below, we preliminarily assign a dumping margin of 22.00 percent to KME Italy.

A. Use of Facts Available

We issued the antidumping duty questionnaire on May 15, 2014, to KME Italy by Federal Express. In communication with the Department, the sales and product manager of KME America/KME Group reported that the questionnaire had been received and that KME Italy had been notified.⁶ In an August 12, 2014, letter to the Department, Mr. Brian Riley, responding on behalf of Mr. Roberto Olivieri, Commercial Director of KME Italy's Rolled Products Unit, reported that KME Italy would not respond to the Department's antidumping duty questionnaire.⁷

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

⁵ See Memorandum from Joseph Shuler, International Trade Analyst, to the File, "Confirmation of Receipt of Questionnaire and Correspondence from KME," dated September 11, 2014. We also uploaded the questionnaire to the record of this proceeding in ACCESS.

⁶ *Id.*, at Attachment 1.

⁷ *Id.*, at Attachment 2.

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, KME Italy 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 KME Italy.

In light of these circumstances, we preliminarily find that KME Italy 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 section 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.⁸ In addition, the Statement of Administrative Action (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.”⁹

Although we provided KME Italy with notice informing it of the consequences of its failure to respond or failure to respond within the established deadline to our questionnaire,¹⁰ KME Italy declined to respond at all to the questionnaire and failed to participate in this review.¹¹ We have, therefore, preliminarily determined that KME Italy failed to cooperate to the best of its ability in providing the necessary information for the Department to conduct an administrative review. Accordingly, we preliminary find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.¹²

⁸ 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).

⁹ See SAA, attached to H.R. No. 103-316, vol. 1 at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 37773, 4163; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

¹⁰ See the Department’s May 15, 2014, questionnaire to KME Italy at page three of the cover letter which states, “{i}f the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. . . . {which} may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.”

¹¹ See Memorandum from Joseph Shuler, International Trade Analyst, to the File, “Confirmation of Receipt of Questionnaire and Correspondence from KME,” dated September 11, 2014.

¹² 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).

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.¹³ As AFA, we preliminarily assign KME Italy the antidumping margin of 22.00 percent, which is the highest rate presented in the petition and relied on for purposes of initiating an investigation.¹⁴ 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.¹⁵

When a respondent is not cooperative, such as KME Italy 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.¹⁶ If this were not the case, the party would have produced current information showing its rate to be lower.¹⁷ Further, by using the highest prior dumping margin, we can be assured 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 previous review under section 751 concerning the subject merchandise.”¹⁸ As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.¹⁹ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.²⁰ As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information.²¹ 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.²²

¹³ See also 19 CFR 351.308(c); SAA at 868-870.

¹⁴ See *Brass Sheet and Strip From Italy; Initiation of Antidumping Duty Investigation*, 51 FR 11774 (April 7, 1986).

¹⁵ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

¹⁶ 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)).

¹⁷ See *Rhone Poulenc*, 899 F.2d at 1190.

¹⁸ See SAA at 870.

¹⁹ *Id.*

²⁰ 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 8.

²¹ See SAA at 869.

²² See 19 CFR 351.308(d); SAA at 870.

The 22.00 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 Italian brass sheet and strip to the United States. These margins ranged from 2.78 to 22.00 percent.²³

KME Italy has not been individually examined in a prior segment of this proceeding. KME Italy 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. Moreover, we do not have any other independent information to use for purposes of corroboration. We therefore preliminarily determine that the AFA rate is corroborated “to the extent practicable” for purposes of this administrative review.²⁴

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 MARCH 2015

Date

²³ See Memorandum from Joseph Shuler, International Trade Analyst, to the file, “Petition to the Investigation,” at Attachment 1, March 31, 2015.

²⁴ See section 776(c) of the Act; SAA at 870; 19 CFR 351.308(d).