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November 20, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of the 2014-2015  
Antidumping Duty Administrative Review: Brass Sheet and Strip  
from Italy

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## SUMMARY

In response to a request from GBC Metals, LLC of Global Brass and Copper, Inc., dba Olin Brass, Heyco Metals, Inc., Aurubuis 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,<sup>1</sup> 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, 2014, through February 28, 2015.

## BACKGROUND

On March 2, 2015, the Department published a notice of opportunity to request an administrative review in the above referenced proceeding.<sup>2</sup> On March 31, 2015, the petitioners requested an administrative review of KME Italy SpA (KME Italy).<sup>3</sup> Based on the petitioners' request, we initiated an administrative review of KME Italy.<sup>4</sup> We released Customs and Border Protection data and invited interested parties to comment.<sup>5</sup> No parties commented. On May 15, 2015, we

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 80 FR 24233 (April 30, 2015).

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

<sup>3</sup> See the petitioners' memorandum, "Brass Sheet and Strip from Italy," dated March 31, 2015, and the petitioners' description of KME Italy as "previously known as Europa Metalli SpA, which was previously known as La Metalli Industriale SpA."

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 80 FR 24233 (April 30, 2015).

<sup>5</sup> See memorandum from Joseph Shuler, International Trade Analyst, to the File, "Release of Customs and Border Protection (CBP) Data," May 18, 2015.



issued the Department's antidumping questionnaire to KME Italy. On May 15, 2015, we received confirmation from KME Italy that it had received our questionnaire.<sup>6</sup>

## **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. For the reasons discussed below, we preliminarily assign a dumping margin of 22.00 percent to KME Italy.

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

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

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<sup>6</sup> See Memorandum from Joseph Shuler, International Trade Analyst, to the File, "Confirmation of Receipt of Antidumping Duty Questionnaire," dated May 21, 2015.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>7</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.<sup>8</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>9</sup> Further, section 776(b)(2) 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.<sup>10</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of the investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>11</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>12</sup> Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>13</sup>

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding when applying an adverse inference, including the highest of such margins.<sup>14</sup> The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated; neither is the Department required to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>15</sup>

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<sup>7</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>8</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

<sup>9</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>10</sup> See also 19 CFR 351.308(c).

<sup>11</sup> See also 19 CFR 351.308(d).

<sup>12</sup> 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.

<sup>13</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>14</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>15</sup> See section 776(d)(3) of the Act; TPEA, section 502(3)section.

### *A. Use of Facts Available*

We issued the antidumping duty questionnaire on May 15, 2015, to KME Italy by Federal Express. In communication with the Department, Mr. Brian Riley, the Vice President of Sales and Business Development at KME America Inc./KME Group reported that the questionnaire had been received.<sup>16</sup> Afterwards, KME Italy missed the deadlines to respond to the Department's antidumping duty questionnaire and did not otherwise communicate with the Department after confirming receipt of the questionnaire. Therefore, KME Italy declined to respond to the Department's antidumping duty questionnaire and has not participated in the proceeding.

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, 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.<sup>17</sup>

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.<sup>18</sup> Section 776(b) also provides that the Department is not required to determine, or make any adjustments to, the dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information. In addition, the Statement of Administrative Action (SAA) provides

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<sup>16</sup> See Memorandum from Joseph Shuler, International Trade Analyst, to the File, "Confirmation of Receipt of Antidumping Duty Questionnaire," dated May 21, 2015.

<sup>17</sup> Section 782(d) of the Act is not applicable in this review, because KME Italy did not file a deficient response to our request for information. It failed to provide any response at all.

<sup>18</sup> See, e.g., *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); see also *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 70295, 70297 (December 11, 2007).

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>19</sup>

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,<sup>20</sup> KME Italy declined to respond at all to the questionnaire and failed to participate in this review.<sup>21</sup> 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.<sup>22</sup> Accordingly, we preliminary find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.<sup>23</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)(2) 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>24</sup> In selecting a rate based on AFA, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>25</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>26</sup> Under section 776(d)(2) of the Act, the Department may use any dumping margin from any segment of a proceeding when applying an adverse inference, including the highest of such margins.<sup>27</sup> Under section 776(d)(3), when selecting an AFA margin, the Department is not required to estimate what the

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<sup>19</sup> See SAA at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

<sup>20</sup> See the Department’s May 15, 2015, 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.”

<sup>21</sup> See Memorandum from Joseph Shuler, International Trade, Analyst, to the File, “Confirmation of Receipt of Questionnaire and Correspondence from KME,” dated May 21, 2015.

<sup>22</sup> See *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) and accompanying Decision Memorandum at 5-6, where the Department applied AFA to the PRC-wide entity because several respondents that were a part of the PRC-wide entity did not respond to the Department’s Q&V questionnaire.

<sup>23</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); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>24</sup> See also 19 CFR 351.308(c); SAA at 868-870.

<sup>25</sup> See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007); see also *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>26</sup> See *Preamble*, 62 FR at 27340

<sup>27</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>28</sup>

As AFA, we preliminarily assign KME Italy the dumping margin of 22.00 percent, which is the highest rate assigned to a respondent in a separate segment of this proceeding. Specifically, the Department assigned KME Italy an antidumping rate of 22.00 percent in the prior administrative review.<sup>29</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>30</sup>

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.<sup>31</sup> If this were not the case, the party would have produced current information to demonstrate that its dumping margin is lower.<sup>32</sup> 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)(1) of the Act requires that, except as provided in paragraph (2), when the Department relies on secondary information, it shall, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Section 776(c)(2) states that the Department shall not be required to corroborate any dumping margin applied in a separate segment of the same proceeding. Therefore, it is unnecessary to corroborate this rate because it was obtained from a separate segment of the same proceeding, pursuant to section 776(c)(2) of the Act.

Accordingly, we preliminarily assign KME Italy the AFA rate of 22.00 percent.

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<sup>28</sup> See section 776(d)(3) of the Act; TPEA, section 502(3) section.

<sup>29</sup> See *Brass Sheet and Strip from Italy; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 38437 (July 6, 2015).

<sup>30</sup> See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

<sup>31</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>32</sup> See *Rhone Poulenc*, 899 F.2d at 1190.

**RECOMMENDATION**

We recommend applying facts otherwise available, with an adverse inference, and assigning to KME Italy a dumping margin for 22.00 percent for these preliminary results.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

Paul Piquado  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

20 NOVEMBER 2015  
\_\_\_\_\_  
Date