



A-475-834
Investigation
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DATE: November 4, 2016

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 the Preliminary Determination in the
Antidumping Duty Investigation of Certain Carbon and Alloy
Steel Cut-To-Length Plate from Italy

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain carbon and alloy steel cut-to-length plate (CTL plate) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The Department also preliminarily determines that critical circumstances exist for Marcegaglia SpA (Marcegaglia), NLMK Verona SpA (NVR), and Officine Tecnosider S.r.l. (OTS) but do not exist with respect to non-individually examined companies. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On April 8, 2016, the Department received an antidumping duty (AD) petition covering imports of CTL plate from Italy,¹ which was filed in proper form by ArcelorMittal USA LLC, Nucor Corporation (Nucor), and SSAB Enterprises, LLC (collectively, the petitioners). The Department initiated this investigation on April 28, 2016.²

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey; and Countervailing Duties on Imports from Brazil, the People’s Republic of China, and the Republic of Korea, dated April 8, 2016 (the petitions).

² See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People’s Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair Value Investigations, 81 FR 27089 (May 5, 2016) (Initiation Notice).



In the Initiation Notice, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on May 5, 2016, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On May 12, 2016, we received comments on behalf of Nucor, a petitioner, and NVR, a producer/exporter of CTL plate from Italy.⁵ In a separate letter, NVR requested treatment as a voluntary respondent.⁶

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of CTL plate to be reported in response to the Department's AD questionnaire.⁷ The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion CTL plate investigations involving Austria, Belgium, Brazil, France, Germany, Japan, Korea, the People's Republic of China, South Africa, Taiwan, and Turkey.⁸

On May 23, 2016, the Department limited the number of respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the subject merchandise by volume. Accordingly, we selected Marcegaglia and OTS as mandatory respondents in this investigation and issued the AD questionnaire to them.⁹

³ See Initiation Notice, 81 FR at 27095.

⁴ See Letter from Shawn Thompson, Program Manager, to All Interested Parties, dated May 5, 2016.

⁵ See Letter from Nucor, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Nucor's Comments on Respondent Selection," dated May 12, 2016; see also Letter from NVR and its parent company, Novolipetsk Steel PJSC, entitled, "NVR's Comments on Respondent Selection: Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy," dated May 12, 2016.

⁶ See Letter from NVR, entitled, "NVR's Request for Mandatory or Voluntary Respondent Treatment: Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy," dated May 10, 2016.

⁷ See Initiation Notice, 81 FR at 27090, 27091.

⁸ For further discussion of these comments, see Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2016 (Preliminary Scope Decision Memorandum), and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated October 13, 2016 (Additional Preliminary Scope Decision Memorandum).

⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Respondent Selection for the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy," dated May 23, 2016.

On May 27, 2016, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of CTL plate from Italy.¹⁰

On June 2, 2016, one of the petitioners, *i.e.*, Nucor, and various other interested parties in this and/or the companion AD investigations submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On June 8, 2016, Nucor and various other interested parties filed rebuttal comments.

On June 15, 2016, Marcegaglia informed the Department that it did not intend to respond to the questionnaire or participate in this investigation.¹¹ Therefore, on June 21, 2016, the Department selected the next largest publicly-identifiable producer/exporter of the subject merchandise, NVR, as a mandatory respondent.¹²

In June 2016, NVR, and OTS submitted timely responses to section A of the Department's AD questionnaire, *i.e.*, the section relating to general information. In July 2016, NVR and OTS responded to sections B, C, and D of the Department's AD questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.

In August 2016, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the preliminary determination until no later than November 4, 2016.¹³

From August 2016 through October 2016, we issued supplemental questionnaires to NVR and OTS, and received responses to these supplemental questionnaires during the same time period. We received responses to these questionnaires in the same months.

¹⁰ See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; Determinations, 81 FR 33705 (May 27, 2016) (ITC Preliminary Determination). See also Memorandum to the File from Brittany Bauer, Analyst, entitled, "Placing the International Trade Commission Preliminary Report on the record for the Anti-Dumping Investigations of Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey," dated October 7, 2016.

¹¹ See Letter from Marcegaglia, entitled, "Carbon and Alloy Steel Cut-to-Length Plate from Italy, Antidumping Investigation, Case No. A-475-834: Letter Regarding Respondent Selection and Initial Antidumping Questionnaire," dated June 15, 2016.

¹² See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Selection of Additional Mandatory Respondent," dated June 21, 2016.

¹³ See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 81 FR 59185 (August 29, 2016).

On September 6, 2016, and October 13, 2016, the Department addressed the scope comments placed on the record of this investigation by interested parties.¹⁴ On October 7, 2016, and October 18, 2016, petitioners ArcelorMittal USA LLC and SSAB Enterprises both filed pre-preliminary determination comments, respectively.¹⁵

In October 2016, NVR and OTS requested that the Department postpone the final determination, and that provisional measures be extended.¹⁶

On October 24, 2016, we received a response to our final cost supplemental questionnaire issued to OTS. Also on October 28, 2016, and November 2, 2016, respectively, we received responses to our final cost and sales supplemental questionnaires issued to NVR. Because these responses were received so late in the proceeding, we did not use this information in our analysis in the preliminary determination. Instead, we will verify this information and consider it for purposes of the final determination.

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2016.¹⁷

IV. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations,¹⁸ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.¹⁹ Certain interested parties commented on the scope of this investigation as it appeared in the Initiation Notice, as well as on additional language proposed by the Department.²⁰ For discussion of changes to the scope from that identified in the Initiation Notice, *see* the "Scope Comments" section of the accompanying Federal Register notice.

¹⁴ *See* Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum, respectively.

¹⁵ *See* Petitioner ArcelorMittal USA LLC's Comments re: "ArcelorMittal USA's Pre-Preliminary Comments in the Antidumping Duty Investigation," dated October 7, 2016; and Petitioner SSAB Enterprises' Comments re: "SSAB's Comments in Anticipation of the Preliminary Determination," dated October 18, 2016.

¹⁶ *See* Letter from NVR, entitled, "NLMK Verona's Request to Postpone Final Determination: Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy," dated October 6, 2016; and Letter from OTS, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Request for Postponement of the Final Determination," dated October 28, 2016.

¹⁷ *See* 19 CFR 351.204(b)(1).

¹⁸ *See* Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

¹⁹ *See* Initiation Notice, 81 FR at 27090.

²⁰ For a summary of the product coverage comments and rebuttal responses submitted on the record of this investigation, and accompanying discussion and analysis of all comments timely received, *see* Preliminary Scope Decision Memorandum and Additional Preliminary Scope Decision Memorandum.

V. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On October 7, 2016, the petitioners filed an allegation that critical circumstances exist with respect to imports of subject merchandise.²¹ Pursuant to 19 CFR 351.206(c)(2), the petitioners requested that the Department issue a preliminary affirmative determination of critical circumstances on an expedited basis.²² On October 13, 2016, the Department requested shipment data from NVR and OTS concerning the critical circumstances allegation. NVR and OTS responded to the Department's request for shipment data on October 27, 2016, and November 4, 2016.²³

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

In its allegation, the petitioners contend that, because the Department has not yet made its preliminary determination in this investigation, the Department may rely on the margins alleged in the petition to decide whether importers knew, or should have known, that dumping was occurring.²⁴ The estimated dumping margin for CTL plate from Italy in the petition is 130.63 percent.²⁵ Therefore, the petitioners maintain that there is information on the record of this

²¹ See Letter from the petitioners, entitled, "Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Critical Circumstances Allegation," dated October 7, 2016 (Critical Circumstances Allegation).

²² Id.

²³ See Letter from NVR, entitled, "NLMK Verona's Monthly U.S. Shipment Data in Response to Department Request," dated October 27, 2016; Letter from OTS, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: OTS' Monthly Quantity and Value Data for Shipment to the United States for August 2015 through October 2016," dated October 27, 2016; and Letter from NVR, entitled, "NLMK Verona's Monthly U.S. Shipment Data in Response to Department Request," dated November 4, 2016.

²⁴ See Critical Circumstances Allegation, at 4-5.

²⁵ See Initiation Notice, 81 FR at 27094.

investigation to impute knowledge to importers that CTL plate from Italy was being sold in the United States at LTFV.²⁶

The petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.²⁷ Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioners submitted import statistics for the subject merchandise covered by the scope of this investigation for the period November 2015 through July 2016 as evidence of massive imports of CTL plate from Italy during a relatively short period.²⁸

Analysis

We considered each of the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.²⁹ There was a previous AD order on CTL plate in the United States³⁰ that was revoked in 2012.³¹ As a result, the Department finds that there is a history of injurious dumping of CTL plate from Italy pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii) of the Act: Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales

Based on our finding of a history of dumping as discussed above, we have an adequate basis to find that importers of CTL plate from Italy knew or should have known that there was likely to be an injury to the United States.

²⁶ See Critical Circumstances Allegation, at 5.

²⁷ Id., at Exhibit 1.

²⁸ Id.

²⁹ See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117, 59120 (November 17, 2009), unchanged in Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010).

³⁰ See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6585 (February, 10, 2000).

³¹ See Certain Cut-To-Length Carbon-Quality Steel Plate From Italy and Japan: Revocation of Antidumping and Countervailing Duty Orders, 77 FR 263 (January 4, 2012).

Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports Over a Relatively Short Period

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ ...have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins, *i.e.*, the date the petition is filed, and ending at least three months later, *i.e.*, the comparison period. This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition, *i.e.*, the base period.

The petitioners contend that imports of CTL plate from Italy into the United States since the AD petition was filed on April 8, 2016, were massive, which is indicative of Italian CTL plate producers offering for sale and selling subject merchandise in the United States at record amounts in order to avoid the imposition of AD duties.³²

As noted above, Marcegaglia did not respond to our request for information. Pursuant to Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act, if necessary information is not available on the record, or an interested party withholds information requested by the Department, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. In this proceeding, Marcegaglia withheld necessary information from the record by not responding to the Department’s questionnaires. Accordingly, the Department does not have information on the record to determine whether critical circumstances exist for Marcegaglia and must apply facts available. Furthermore, Marcegaglia’s failure to provide such information on the record leads us to a preliminary determination that Marcegaglia has failed to cooperate by not acting to the best of its ability in this investigation. Therefore, in accordance with section 776(b) of the Act, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, as adverse facts available, we preliminarily find that there were massive imports of subject merchandise from Marcegaglia, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

For the remaining companies, we found that imports based on NVR’s and OTS’s reported shipments of merchandise under consideration during the comparison periods increased by more than 15 percent over its respective imports in the base periods, while imports from all other companies did not.³³ Therefore, we preliminarily find there to be massive imports only for NVR

³² See Critical Circumstances Allegation, at 3.

³³ See Memorandum to the File from Blaine Wiltse, Senior Analyst, entitled “Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Critical Circumstances Analysis,” dated November 4, 2016.

and OTS, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Based on the above analysis, we are preliminarily making an affirmative finding of critical circumstances for Marcegaglia, NVR, and OTS, and a negative finding of critical circumstances for all other companies.

VI. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether NVR's and OTS's sales of subject merchandise from Italy to the United States were made at LTFV, the Department compared the EP or CEP, as appropriate, to the normal value (NV), as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this memorandum.

A) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³⁴ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such

³⁴ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); and Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative

comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) Results of the Differential Pricing Analysis

NVR

For NVR, based on the results of the differential pricing analysis, the Department preliminarily finds that 68.38 percent of the value of U.S. sales pass the Cohen's *d* test,³⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for NVR.

OTS

For OTS, based on the results of the differential pricing analysis, the Department preliminarily finds that 99.21 percent of the value of U.S. sales pass the Cohen's *d* test,³⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying

³⁵ See Memorandum to the File from Blaine Wiltse, Senior Analyst, and Brittany Bauer, Analyst, entitled, "Preliminary Determination Calculations for NLMK Verona SpA," dated November 4, 2016 (NVR Preliminary Calculation Memo) at 4.

³⁶ See Memorandum to the File from Alice Maldonado, Senior Analyst, and Whitley Herndon, Analyst, entitled, "Preliminary Determination Calculations for Officine Tecnosider S.R.L. (OTS)" dated November 4, 2016 (OTS Preliminary Calculation Memo) at 3-4.

the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for OTS.

VII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁷

NVR reported invoice date as the date of sale for all home market and U.S. sales.³⁸ OTS reported the shipment date from the factory as the date of sale for all home market and U.S. sales.³⁹ The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁴⁰ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale in both markets, in accordance with our practice.⁴¹

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents, NVR and OTS, in Italy during the POI that fit the description in the "Scope of Investigation" section of the accompanying Federal Register notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or CV, as appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: quality,

³⁷ See 19 CFR 351.401(i); see also Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³⁸ See NVR's Section B response, dated July 15, 2016, at 20-21; NVR's Section C response, dated July 15, 2016, at 18; NVR's Supplemental Section A response, dated September 2, 2016 (NVR's Supplemental Section A Response), at 15-18; and NVR's Supplemental Section B response, dated September 23, 2016, at 10.

³⁹ See OTS's Supplemental Section A response, dated August 12, 2016 (OTS's Supplemental Section A Response), at SA-7 – SA-8.

⁴⁰ See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11; see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

⁴¹ Id.

minimum specified carbon content, minimum specified chromium content, minimum specified nickel content, minimum specified yield strength, nominal thickness, heat treatment status, nominal width, form, painting, the existence of patterns in relief, and descaling.

IX. EXPORT PRICE/CONSTRUCTED EXPORT PRICE

For all sales made by NVR, we used CEP methodology, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and EP methodology was not otherwise warranted. For all sales made by OTS, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

NVR

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments. We also made deductions, from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, international freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees), U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the unaffiliated U.S. customer, in accordance with section 772(c)(2)(A) of the Act. With respect to foreign inland freight, international freight, U.S. brokerage and handling, and inland freight from port to the warehouse, NVR reported these expenses on an allocated basis for the POI. Although NVR stated that it could report these expenses on a transaction-specific basis, it did not do so despite a specific request by the Department and the requirement in 19 CFR 401(g). Therefore, we have based the amount of these expenses on AFA. As AFA for international freight expenses, we used the highest rate on the record of this investigation. Because the record contains only one amount for the remaining expenses, we adjusted the reported amounts by the ratio of the reported international freight expense and the international freight expense used as AFA. We have provided NVR an additional opportunity to report these expenses on a transactions-specific basis, and we will consider this information for the final determination.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by NVR and its U.S. affiliate, North America Plate (NAP) on their sales of the subject merchandise in the United States and the profit associated with those sales.

OTS

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

X. NORMAL VALUE

A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

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

B) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴³ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, i.e., the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, i.e., NV based on either home market or third country prices,⁴⁴ we consider the

⁴² See 19 CFR 351.412(c)(2).

⁴³ Id.; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

⁴⁴ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive

starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁵

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, i.e., no LOT adjustment is possible, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁶

In this investigation, we obtained information from NVR and OTS regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution.⁴⁷ Our LOT findings are summarized below.

NVR

In the home market, NVR reported that it made sales through one channel of distribution, i.e., direct sales to home market customers.⁴⁸ According to NVR, it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; order input/processing; employment of direct sales personnel; sales/marketing support; market research; provision of technical assistance; provision of claims service and guarantees; and freight and delivery.⁴⁹

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that NVR performed sales and marketing, freight and delivery services, and warranty and technical support

selling, general and administrative expenses (SG&A), and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁵ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁴⁶ See, e.g., OJ from Brazil, and accompanying Issues and Decision Memorandum at Comment 7.

⁴⁷ See NVR's Section A response, dated June 15, 2016 (NVR's Section A Response), at 14-18; NVR's Supplemental Section A Response, at 10-14 and Exhibit SA-5; OTS's Section A response, dated June 15, 2016 (OTS's Section A Response), at A-11 – A-16; OTS's Supplemental Section A Response, at SA-3 – SA-6 and Exhibit SA-4; OTS's Supplemental Sections A-C response, dated September 6, 2016 (OTS's Supplemental Sections A-C Response), at SB-6 – SB-7.

⁴⁸ See NVR's Supplemental Section A Response, at Exhibit SA-5.

⁴⁹ Id. NVR also indicated in the Exhibit that it performed the following selling functions: 1) sales promotion, 2) provision of procurement/sourcing services, 3) provision of rebates, and 4) provision of port services. However, NVR provided no information on these selling functions in its narrative response, and it did not provide selling expenses associated any of them except rebates in its home market sales listing. Therefore, we have not considered the selling functions in the LOT analysis performed for this preliminary determination.

for its home market sales. Because we find that there were no differences in selling activities performed by NVR to sell to its home market customers, we determine that there is one LOT in the home market for NVR.

With respect to the U.S. market, NVR reported that it made sales to its affiliated U.S. reseller, NAP, in two channels of distribution, *i.e.*, direct shipments to the U.S. affiliate's customers (Channel 1) and shipments to the U.S. affiliate, either for its own inventory or for resale on a consignment basis (Channel 2).⁵⁰ NVR reported that it performed the following selling functions in Italy for sales in Channel 1: sales forecasting; strategic/economic planning; order input/processing; sales/marketing support; provision of claims service; freight and delivery; and provision of port services.⁵¹ NVR reported that it performed the same selling functions for sales in Channel 2, except for sales forecasting and sales/marketing support. Accordingly, based on the selling function categories noted above, we find that NVR performed sales and marketing, freight and delivery services, and warranty and technical support for all of its reported U.S. sales. Because the selling functions performed for the two channels of trade do not differ significantly, such that we would consider these channels to be separate marketing stages, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions NVR performed for its U.S. and home market customers do not differ significantly.⁵² Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, a CEP offset is not warranted.

OTS

In the home market, OTS reported that it made sales through three channels of distribution, *i.e.*, sales to trading companies, stockholders/service centers, and end users.⁵³ According to OTS, it performed the following selling functions for sales to all home market customers: strategic/economic planning; sales forecasting; sales force development; market research; solicitation of orders; provision of technical advice; negotiation of prices; operation of production facilities and customer liaison; processing purchase orders; invoicing; arranging for freight and delivery; accounts receivable management; advertising; inventory maintenance; and packing.⁵⁴

⁵⁰ Id.

⁵¹ Id. NVR also indicated in Exhibit SA-5 that it performed certain procurement and sourcing services with respect to sales to its U.S. affiliate. However, NVR provided no information on these services in its narrative response, and it did not provide selling expenses associated with them in its U.S. sales listing. Therefore, we have not considered this selling function in the LOT analysis performed for this preliminary determination.

⁵² See NVR's Section A Response, at 16, which states, "NVR performed similar selling functions in the home market and for its export sales to the U.S., where its only customer is NAP," and at 18, which states, "NVR is not requesting a CEP offset."

⁵³ See OTS's Section A Response, at A-12.

⁵⁴ See OTS's Supplemental Section A Response, at SA-4.

As noted above, selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that OTS performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its home market sales. Because we find that there were no differences in selling activities performed by OTS to sell to its three types of home market customers, we determine that there is one LOT in the home market for OTS.

With respect to the U.S. market, OTS reported that it made sales through one channel of distribution, *i.e.*, direct sales to unaffiliated U.S. trading companies.⁵⁵ OTS reported that it performed the following selling functions in the United States for its EP sales: strategic/economic planning; sales forecasting; sales force development; market research; solicitation of orders; provision of technical advice; negotiation of prices; operation of production facilities and customer liaison; processing purchase orders; invoicing; arranging for freight and delivery; accounts receivable management; advertising; inventory maintenance; and packing.⁵⁶ Accordingly, based on the selling function categories noted above, we find that OTS performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all of its reported U.S. sales. Because OTS performed the same selling functions at the same level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions OTS performed for its U.S. and home market customers do not differ significantly. Therefore, we preliminarily determine that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, an LOT adjustment is not warranted.

C) *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than COP.⁵⁷ The 2015 law does not specify dates of application for those amendments.⁵⁸ On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁵⁹ Section 773 (b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of

⁵⁵ See OTS's Section A Response at A-12.

⁵⁶ See OTS's Supplemental Section A Response, at SA-4.

⁵⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁵⁸ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the petitions.

⁵⁹ 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).

August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁶⁰ Accordingly, the Department requested this information from NVR and OTS.

We examined NVR's and OTS's cost data. We determined that our quarterly cost methodology is not warranted for NVR, and, therefore, we applied our standard methodology of using annual costs based on NVR's reported data. With respect to OTS, however, we have used quarterly cost methodology for the reasons noted below.

1. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POI. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POI must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.⁶¹

a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low- quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.⁶² In the instant case, record evidence shows that OTS experienced significant changes, *i.e.*, changes that exceeded 25 percent, between the high and low quarterly COM during the POI.⁶³ This change in COM is attributable primarily to the price volatility for slab used in the production of CTL plate.⁶⁴

b. Linkage Between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POI.⁶⁵ Absent a surcharge or other pricing mechanism, the Department may

⁶⁰ Id., 80 FR at 46794-95.

⁶¹ See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010) (SSSSC from Mexico), and accompanying Issues and Decision Memorandum at Comment 6 and Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008) (SSPC from Belgium), and accompanying Issues and Decision Memorandum at Comment 4.

⁶² See SSPC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

⁶³ See Memorandum from Angie Sepulveda, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Officine Tecnosider S.r.l." (OTS Preliminary Cost Calculation Memorandum), dated November 4, 2016 at 2.

⁶⁴ Id.

⁶⁵ See SSSSC from Mexico, and accompanying Issues and Decision Memorandum at Comment 6 and SSPC from

alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.⁶⁶ To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POI, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that sales and costs for OTS showed reasonable correlation.⁶⁷ After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between OTS's changing sales prices and costs during the POI.⁶⁸ Therefore, we preliminarily determine that a shorter cost period approach, based on a quarterly-average COP, is appropriate for OTS because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses. As noted above, for NVR, we examined the cost data and preliminarily determine that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below. However with respect to the analysis for OTS, the COP is based on a quarterly average COP rather than an annual average COP. See the "Cost Averaging Methodology" section above for further discussion.

We relied on the COP data submitted by the respondents, except as follows:⁶⁹

NVR

- We adjusted the reported COM for raw material inputs, in accordance with the major input rule at section 773(f)(3) of the Act.
- Where NVR reported sales of products produced prior to the POI, we assigned costs to these products using the costs reported for the most similar product produced during the POI.

Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁶ See SSSC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁷ See OTS Preliminary Cost Calculation Memorandum at 3.

⁶⁸ Id.; see also SSSC from Mexico, and accompanying Issues and Decision Memorandum at Comment 6 and SSPC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁹ See Memorandum from Stephanie C. Arthur, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – NLMK Verona SpA" (NVR Preliminary Cost Calculation Memorandum), dated November 4, 2016. See also OTS Preliminary Cost Calculation Memorandum.

OTS

- We revised the per-unit direct material costs to include a business proprietary expense and to disallow the conversion cost adjustment.
- Where OTS reported sales of products produced prior to the POI, we assigned costs to these products using the costs reported for the most similar product produced during the POI.

3. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

4. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353 (CIT 2010), and SeAH Steel Corporation v. United States, 764 F. Supp. 2d 1322, 1332 (CIT 2011), the Court of International Trade (CIT) held that because the cost recovery test in section 773(b)(2)(D) of the Act speaks to "the weighted average per unit cost of production for the period of investigation or review," that provision does not permit the Department to "compare prices to a weighted average per unit cost for a different time span." Accordingly, in the instant investigation, we have used an unadjusted annual average cost for purposes of the cost recovery test.⁷⁰ Furthermore, using a methodology adopted in SPT from Turkey, we calculated a control number-specific, weighted-average annual price using only those sales that were made below their quarterly COP, and compared the

⁷⁰ See Certain Welded Carbon Steel Pipe and Tube From Turkey; Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 76939 (December 9, 2011) (SPT From Turkey).

resulting weighted-average price to the annual weighted-average cost per control number. If the annual weighted-average price per control number was above the annual weighted-average cost per control number, we considered those sales to have provided for the recovery of costs, and we restored all such sales to the NV pool of comparison-market sales available for comparison with U.S. sales.⁷¹

We found that, for certain products, more than 20 percent of NVR's and OTS's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

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

NVR

We reclassified NVR's sales of foreign like product with superficial defects as prime merchandise because NVR reported that it was able to sell these products for their intended purpose.⁷²

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and rebates, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act. We disallowed home market rebates where NVR did not provide documentation showing that the rebate was either known to the customer at the time of sale or reported for sales made after the rebate period; we capped the amount of the remaining rebates by the rebate percentage shown in NVR's rebate agreement with its customers.⁷³

For comparisons to CEP sales, we deducted home market credit expenses and commissions, pursuant to 773(a)(6)(C) of the Act. With respect to home market commissions, we relied on the amounts that NVR originally reported because the revised expenses submitted in its most recent home market sales listing contain obvious errors.⁷⁴ We capped our deduction for home market commissions by the amount of U.S. indirect selling expenses.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

⁷¹ For further details regarding the cost recovery methodology and the application of our shorter cost period methodology, see OTS Preliminary Cost Calculation Memorandum.

⁷² See NVR's Fifth Supplemental Response, dated October 11, 2016, at 2, and NVR's Supplemental Section D Response, dated October 4, 2016, at 9. For further discussion, see the NVR Preliminary Calculation Memo.

⁷³ For further discussion, see the NVR Preliminary Calculation Memo.

⁷⁴ For example, NVR reported negative values for some home market commissions. For further discussion, see the NVR Preliminary Calculation Memo.

We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁷⁵

OTS

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.⁷⁶ OTS incurred freight expenses on merchandise that was returned by the home market customer. Although OTS reported these expenses as movement expenses, we reclassified them as indirect selling expenses, in accordance with our practice.⁷⁷

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, commissions and credit expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses. In instances where home market sales remained unpaid as of the date of OTS's latest response, we used the signature date of the preliminary determination, *i.e.*, November 4, 2016, as the payment date, and we recalculated home market imputed credit expenses, in accordance with our practice.⁷⁸ We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁷⁹

⁷⁵ Id.

⁷⁶ OTS reported freight expenses in the home market based on contract rates established with its freight suppliers. Because OTS provided source documentation demonstrating that it generally paid freight costs that were higher than the reported per-unit amounts, *i.e.*, OTS's reporting was conservative, we have accepted the reported freight expenses for this preliminary determination. See OTS's Supplemental Sections A-C Response, at Exhibit SB-22; and OTS's Supplemental Sections B-D response, dated September 21, 2016, at 19-23.

⁷⁷ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17413 (March 26, 2012), and accompanying Issues and Decision Memorandum, at 30. For further discussion, see the OTS Preliminary Calculation Memo, at 1-2.

⁷⁸ See, Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005), and accompanying Issues and Decision Memorandum at Comment 8.

⁷⁹ See 19 CFR 351.411(b).

E) *Price-to-Constructed Value Comparisons*

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

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

For comparisons to NVR's CEP sales, we deducted from CV direct selling expenses incurred on its home market sales, in accordance with section 773(a)(7)(ii)(B) of the Act. We offset NVR's home market commissions with its U.S. indirect selling expenses, as noted above.

XI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, Marcegaglia was selected as a mandatory respondent. This company received the Department's questionnaire in the investigation, but did not submit a response. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Marcegaglia.

A) *Application of Facts Available*

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or 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, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Marcegaglia did not respond to our original questionnaire or otherwise participate in this investigation. As a result, we preliminarily find that the necessary information is not available

on the record of this investigation, that Marcegaglia withheld information the Department requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. Moreover, because Marcegaglia failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Marcegaglia's preliminary dumping margin.

B) *Use of Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed 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.⁸⁰ In doing so, and under the TPEA,⁸¹ 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.⁸² In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (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."⁸³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁸⁴ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁸⁵

We preliminarily find that Marcegaglia has not acted to the best of its ability to comply with the Department's request for information. Marcegaglia informed the Department that it did not intend to participate in the investigation covering CTL plate from Italy. Further, it failed to respond to the Department's questionnaire. The failure of Marcegaglia to participate in this

⁸⁰ See 19 CFR 351.308(a); see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); and 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).

⁸¹ As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See Applicability Notice, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

⁸² See section 776(b)(1)(B) of the Act.

⁸³ See H.R. Doc. 103-316, Vol. 1 (1994) 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).

⁸⁴ See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Preamble, 62 FR at 27340.

⁸⁵ See, e.g., 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 Issues and 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).

investigation and respond to the Department's questionnaire has precluded the Department from performing the necessary analysis to calculate a weighted-average AD margin for it based on its own data. Accordingly, the Department concludes that Marcegaglia failed to cooperate to the best of its ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁸⁶

C) *Selection and Corroboration of the AFA Rate*

Section 776(b)(2) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁸⁷ In selecting a rate based on AFA, the Department selects a rate that 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.⁸⁸ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁸⁹

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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 of the Act concerning the subject merchandise.⁹⁰ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.⁹¹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.⁹² Further, under

⁸⁶ See, e.g., Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at pages 7-11, unchanged in Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part, 79 FR 61609 (October 14, 2014); see also Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁸⁷ See also 19 CFR 351.308(c).

⁸⁸ See SAA at 870.

⁸⁹ See Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

⁹⁰ See SAA at 870.

⁹¹ Id.; see also 19 CFR 351.308(d).

⁹² See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391,

the TPEA, 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.⁹³

With respect to the investigation covering CTL plate from Italy, the highest dumping margin calculated for subject merchandise from Italy in the petition is 130.63 percent.⁹⁴ In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 130.63 percent to the transaction-specific dumping margins for the mandatory respondents, *i.e.*, NVR and OTS, we found product-specific margins at or above the petition rate⁹⁵ and, as a consequence, we find that the rate alleged in the petition, as noted the Initiation Notice, is within the range of transaction-specific margins computed for this preliminary determination.

In sum, the Department corroborated the AFA rate of 130.63 percent to the extent practicable within the meaning of section 776(c) of the Act because the rate is relevant to the uncooperative respondents. As the 130.63 percent rate is both reliable and relevant, we determine that it has probative value and, thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we preliminarily assigned this AFA rate to subject merchandise from Marcegaglia.

XII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

⁹³ See sections 776(d)(3)(A) and (B) of the Act.

⁹⁴ See Initiation Notice; see also AD Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-Length Plate from Italy (April 28, 2016).

⁹⁵ See Memorandum to the File from Brittany Bauer, entitled, “Corroboration of Adverse Facts Available Rate for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy,” dated November 4, 2016.

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 NOVEMBER 2016
Date