



A-427-828  
Administrative Review  
POR: 11/14/2016-04/30/2018  
**Public Document**  
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July 10, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
2016-2018 Administrative Review of the Antidumping Duty Order  
on Certain Carbon and Alloy Steel Cut-To-Length Plate from  
France

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from France. The period of review (POR) is November 14, 2016 through April 30, 2018. The administrative review covers one mandatory respondent, Industeel France S.A.S (Industeel). We preliminarily determine that Industeel's sales of the subject merchandise have been made at prices less than normal value (NV) during the POR.

## II. BACKGROUND

On May 25, 2017, Commerce published in the *Federal Register* an AD order on CTL plate from France.<sup>1</sup> Subsequently, on May 1, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on CTL plate from France for the period November 14, 2016 through April 30, 2018.<sup>2</sup>

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<sup>1</sup> 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, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders*, 82 FR 24096 (May 25, 2017).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 19047 (May 1, 2018).



Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in May 2018, Commerce received a request to conduct an administrative review of the AD order on CTL plate from France from Industeel. On July 12, 2018, based on this timely request, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the AD order on CTL plate from France.<sup>3</sup>

In August and September 2018, we received timely responses to Commerce's AD questionnaire, and, in November 2018 and March 2019, Industeel timely responded to our supplemental questionnaires.

In November 2018, we extended the preliminary results of this review to no later than May 31, 2019. Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.<sup>4</sup> The revised deadline for the preliminary results of this review is now July 10, 2019.

In April 2019, we conducted verification of Industeel's sales and cost data at its offices in France.

### **III. SCOPE OF THE ORDER**

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018) (*Initiation Notice*).

<sup>4</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

- (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;
- (2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:
  - MIL-A-12560,
  - MIL-DTL-12560H,
  - MIL-DTL-12560J,
  - MIL-DTL-12560K,
  - MIL-DTL-32332,
  - MIL-A-46100D,
  - MIL-DTL-46100-E,
  - MIL-46177C,
  - MIL-S-16216K Grade HY80,
  - MIL-S-16216K Grade HY100,
  - MIL-S-24645A HSLA-80;
  - MIL-S-24645A HSLA-100,
  - T9074-BD-GIB-010/0300 Grade HY80,
  - T9074-BD-GIB-010/0300 Grade HY100,
  - T9074-BD-GIB-010/0300 Grade HSLA80,
  - T9074-BD-GIB-010/0300 Grade HSLA100, and
  - T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

- (3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;
- (5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

- (i) 270-300 HBW,
- (ii) 290-320 HBW, or
- (iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015,

7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

#### **IV. DISCUSSION OF THE METHODOLOGY**

##### **A. Comparisons to Normal Value**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), and (d), in order to determine whether Industeel's sales of CTL plate from France to the United States were made at less than NV, Commerce compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

##### **B. Determination of Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In a less-than-fair-value (LTFV) investigation, Commerce 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in a LTFV investigation.<sup>5</sup>

In numerous AD investigations and reviews, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>6</sup> Commerce 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 administrative review. Commerce will continue to develop its approach in this area based on

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<sup>5</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("The fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted).

<sup>6</sup> 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).

comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. sales by purchaser, region, and time period 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 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 consolidated customer codes reported by the respondent. Regions are defined using the reported destination code (*i.e.*, state) 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 POR based upon the U.S. 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 Commerce 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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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 these preliminary results, including arguments for modifying the group definitions used in this proceeding.

### **C. Results of the Differential Pricing Analysis**

For Industeel, based on the results of the differential pricing analysis, Commerce preliminarily finds that 16.37 percent of the value of U.S. sales pass the Cohen's *d* test<sup>7</sup> and do not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Industeel.

### **D. Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced by Industeel covered by the description in the "Scope of the Order" section and sold in the home market during the POR to be foreign like products for purposes of determining NV for the merchandise sold in the United States. We compared U.S. sales to sales made in the home market for Industeel. Pursuant to 19 CFR 351.414(f), we compared Industeel's U.S. sales of CTL plate to its sales of CTL plate made in the home market within the contemporaneous window period,

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<sup>7</sup> See Memorandum, "Calculations for the Preliminary Results of the 2016 – 2018 Administrative Review," dated concurrently with this memorandum (Industeel Preliminary Sales Calculation Memorandum).

which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

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 constructed value (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, minimum specified carbon content, minimum specified chromium content, minimum specified nickel content, minimum specified tungsten content, minimum specified cobalt content, minimum specified molybdenum content, minimum specified vanadium content, minimum specified yield strength, nominal thickness, heat treatment status, nominal width, form, painting, the existence of patterns in relief, and descaling.

## **E. Export Price**

For all sales made by Industeel, we defined U.S. price based on the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts on the record.

We based EP on packed prices to the first unaffiliated purchaser in the United States. We increased the starting price by the amount of billing adjustments, where appropriate, pursuant to 19 CFR 351.401(c). We made deductions for movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and U.S. brokerage and handling), in accordance with section 772(c)(2)(A) of the Act. Based on our findings at verification, we made additional adjustments to Industeel's reported control numbers, product characteristics, credit expenses, indirect selling expenses, inventory carrying costs, and payment dates.<sup>8</sup> We also excluded from our calculations U.S. sales that Industeel reported but which entered while suspension of liquidation was discontinued prior to the publication of the final injury determination of the International Trade Commission.<sup>9</sup>

## **F. Normal Value**

### **1. 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 five percent or more of the aggregate volume of U.S. sales), we compared the volume of Industeel's home market sales of the foreign like product to the volume of its U.S.

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<sup>8</sup> See Industeel Preliminary Sales Calculation Memorandum; and Memorandum, "Verification of the Sales Response of Industeel France S.A. in the Antidumping Duty Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from France," dated June 7, 2019 (Industeel Sales Verification Report).

<sup>9</sup> See *Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, Germany, Italy, Japan, Korea, and Taiwan*. 82 FR 23592 (May 23, 2017).

sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the aggregate volume of home market sales of the foreign like product for Industeel was sufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Industeel, in accordance with section 773(a)(1)(B)(i) of the Act.

## 2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce 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).<sup>10</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>11</sup> 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).

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),<sup>12</sup> we consider the 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)(2) of the Act.<sup>13</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP 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), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>14</sup>

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<sup>10</sup> See 19 CFR 351.412(c)(2).

<sup>11</sup> *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) (*OJ from Brazil*), and accompanying IDM at Comment 7.

<sup>12</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>13</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>14</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

In this administrative review, we obtained information from Industeel regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.<sup>15</sup>

In the home market, Industeel reported that it made sales through one channel of distribution during the POR, *i.e.*, delivered sales to unaffiliated customers.<sup>16</sup> According to Industeel, it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion/trade shows; sales promotion/customer outreach; distributor/dealer training; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; rebates; cash discounts; commissions; warranty service; guarantees; after-sales services; repacking; freight and delivery; and post-sale warehousing.<sup>17</sup>

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 Industeel performed sales and marketing, inventory maintenance and warehousing, freight and delivery, and warranty and technical support for all of its home market sales. Because we find that there were no significant differences in selling activities performed by Industeel to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Industeel.

With respect to the U.S. market, Industeel reported that it made sales through one channel of distribution, *i.e.*, delivered sales to unaffiliated customers.<sup>18</sup> Industeel reported that it performed the following selling functions for sales to all U.S. customers: strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion/trade shows; distributor/dealer training; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; warranty service; guarantees; after-sales services; and freight and delivery.<sup>19</sup>

Accordingly, based on the selling function categories noted above, we find that Industeel performed sales and marketing, inventory maintenance and warehousing, and warranty and technical support for all of its U.S. sales, and freight and delivery for the vast majority of U.S. sales. Because we find that there were no significant differences in selling activities performed by Industeel to sell to its U.S. customers, we preliminarily determine that all U.S. sales are at the same LOT.

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<sup>15</sup> See Industeel's September 19, 2018 Section B Questionnaire Response (Industeel's September 19, 2018 BQR) at 24.

<sup>16</sup> See Industeel's August 23, 2018 Section A Questionnaire Response (Industeel's August 23, 2018 AQR) at A-16 and Exhibit A-4.

<sup>17</sup> *Id.* at A-17 through A-25 and Exhibit A-5.

<sup>18</sup> *Id.* at Exhibit A-4; and Industeel's September 19, 2018 Section C Response at 21.

<sup>19</sup> See Industeel's August 23, 2018 AQR at A-17 through A-25 and Exhibit A-5.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Industeel performed for its U.S. and home market customers do not differ significantly.<sup>20</sup> Therefore, we preliminarily determine that Industeel's sales to the United States and home market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted.

## **G. Cost of Production Analysis**

Pursuant to the amendment of section 773(b)(2)(A)(ii) of the Act, Commerce required that respondents provide CV and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

### **1. Calculation of COP**

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and financial expenses.<sup>21</sup> We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data.

We relied on the COP data submitted by Industeel, except as follows:<sup>22</sup>

- We increased the cost of manufacturing (COM) for each control number to account for the understated overall variances in the reported total COM;
- We increased the G&A expenses to account for year-end bonuses and additional depreciation on certain assets; and
- We disallowed the unsupported interest income offset to the financial expenses.

### **2. 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 within an extended period of time in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses.

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<sup>20</sup> *Id.*

<sup>21</sup> See the "Test of Comparison Market Sales Prices" section for treatment of home market selling expenses.

<sup>22</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Industeel France S.A.," dated July 10, 2019.

### 3. Results of the COP Test

In determining whether to disregard comparison 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 POR, 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.

We found that, for certain products, more than 20 percent of Industeel's home market sales 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 as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### **H. Calculation of NV Based on Comparison Market Prices**

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, early payment discounts, and rebates in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for inland freight expenses and insurance expenses under section 773(a)(6)(B)(ii) of the Act. Based on our findings at verification, we made additional adjustments to Industeel's reported home market sales.<sup>23</sup>

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, 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, credit expenses, and warranty expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses.

According to Industeel, it paid commissions to affiliated and unaffiliated sales agents.<sup>24</sup> We tested the arm's length nature of the fees Industeel paid to its affiliated agents by comparing those fees to the fees Industeel paid to its unaffiliated agent. Because the affiliates' fees were not at arm's length, we based the calculation of commission expenses on the affiliates' costs.<sup>25</sup>

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<sup>23</sup> See Industeel Preliminary Sales Calculation Memorandum; and Industeel Sales Verification Report.

<sup>24</sup> See Industeel's September 19, 2018 BQR at 40.

<sup>25</sup> See Industeel Preliminary Sales Calculation Memorandum.

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 between the subject merchandise and the similar foreign like product, 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.<sup>26</sup>

## **I. Calculation of NV Based on Constructed Value**

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. For those CTL plate products for which we could not determine the NV based on comparison market sales, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for financial, selling and G&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, financial, and G&A expenses based on the methodology described in the “Cost of Production Analysis” section. We based selling expenses and profit for Industeel on the actual amounts incurred and realized by Industeel in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

## **V. CURRENCY CONVERSION**

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

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<sup>26</sup> See 19 CFR 351.411(b).

## VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

7/10/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance