



A-427-830
Investigation
Public Document
E&C/OVIII: JS/DM

September 30, 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: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Strontium Chromate from France

I. SUMMARY

The Department of Commerce (Commerce) finds that strontium chromate from France is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2017, through June 30, 2018. This investigation covers one mandatory respondent, Société Nouvelle des Couleurs Zinciques (SNCZ).

After analyzing the comments submitted by interested parties, and based on our findings at verification, we made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Issues

Comment 1: Application of Adverse Facts Available due to Unverified Freight Expenses
Comment 2: Adjustment to Cost of Manufacturing for Unreported Depreciation
Comment 3: Adjustment to General and Administrative (G&A) Expense Rate for Certain Expenses Identified at Verification

¹ See *Strontium Chromate from France: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 22438 (May 17, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On May 17, 2019, Commerce published the *Preliminary Determination* and invited parties to comment after the issuance of verification reports.² On July 18 and 22, 2019, we issued our reports on the verifications of the cost of production (COP) and sales data reported by SNCZ, which were conducted in June 2019, in accordance with section 782(i) of the Act.³ In August 2019, the petitioner⁴ and SNCZ submitted case and rebuttal briefs.⁵ In the *Preliminary Determination*, Commerce postponed the final determination until September 30, 2019.⁶

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.⁷

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is strontium chromate from France. For a full description of the scope of this investigation, see the accompanying *Federal Register* notice at Appendix I.

IV. MARGIN CALCULATIONS

We calculated export price, normal value, and COP for SNCZ using the same methodology as stated in the *Preliminary Determination* except as follows:

1. As discussed below in Comment 1, we assigned partial adverse facts available (AFA) to domestic inland and international freight expenses for all U.S. sales based on verification findings.⁸

² See *Preliminary Determination*, 84 FR at 22438.

³ See Memoranda, “Verification of the Cost Response of Société Nouvelle des Couleurs Zinciques in the Less-than-Fair-Value Investigation of Strontium Chromate from France,” dated July 18, 2019 (SNCZ Cost Verification Report) and “Verification of the Sales Response of Société Nouvelle des Couleurs Zinciques in the Antidumping Investigation of Strontium Chromate from France,” dated July 22, 2019 (SNCZ Sales Verification Report).

⁴ The petitioner is Lumimove, Inc., d.b.a. WPC Technologies.

⁵ See Petitioner’s Case Brief, “Strontium Chromate from France: Case Brief,” dated August 2, 2019 (Petitioner’s Case Brief); see also SNCZ’s Rebuttal Brief, “Strontium Chromate from France: Submission of SNCZ Rebuttal Brief,” dated August 8, 2019 (SNCZ’s Rebuttal Brief).

⁶ See *Preliminary Determination*, 84 FR at 22440, and accompanying PDM at 4. The deadline for this final determination falls on Sunday, September 29, 2019, a non-business day. Commerce’s practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁷ In the companion less-than-fair-value investigation of strontium chromate from Austria, Commerce revised its product comparison hierarchy based on issues raised in case briefs and rebuttal briefs on the record of that investigation. Because no interested parties in this investigation raised any issues related to the product comparison hierarchy, Commerce has not made any changes to it in the final determination. If the investigation results in an antidumping duty order and an administrative review of the order is requested, Commerce will consider comments on the product comparison hierarchy at that time.

⁸ See Memorandum, “Final Determination Margin Calculation for Société Nouvelle des Couleurs Zinciques,” dated

2. We corrected the inland freight from plant/warehouse to customer expenses for two home market sales based on verification findings.⁹
3. We corrected the inventory carrying costs for all home market and U.S. sales based on verification findings.¹⁰
4. We corrected the bank fee for one U.S. sale based on verification findings.¹¹
5. As discussed below in Comment 2, we corrected the fixed overhead costs based on verification findings.¹²
6. As discussed below in Comment 3, we corrected the G&A expense rate based on verification findings.¹³
7. We recalculated the financial expense ratio to reflect the revised total cost of manufacturing.¹⁴

V. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, we preliminarily found that critical circumstances did not exist for SNCZ or for all other producers and exporters.¹⁵ Parties did not address our critical circumstances finding in their case briefs.

Pursuant to section 735(a)(3) of the Act and 19 CFR 351.206(e) and 351.210(c), we hereby make a final determination regarding critical circumstances. Regarding whether a history of dumping and material injury exists, in the *Preliminary Determination*, we found that there was not a history of injurious dumping of strontium chromate from France and that this criterion is not met. No party submitted comments regarding that finding. As the record contains no other information or evidence that calls into question our preliminary finding, we adopt the reasoning and finding outlined in the *Preliminary Determination* with respect to this issue. Therefore, in accordance with section 735(a)(3)(A)(i) of the Act, we continue to find that there is not a history of injurious dumping of strontium chromate from France.

concurrently with this memorandum (SNCZ Sales Calculation Memorandum) at 2-3 and SNCZ Sales Verification Report at 11.

⁹ See SNCZ Sales Calculation Memorandum at 2; *see also* SNCZ Sales Verification Report at 11.

¹⁰ See SNCZ Sales Calculation Memorandum at 2-3; *see also* SNCZ Sales Verification Report at 13.

¹¹ See SNCZ Sales Calculation Memorandum at 3; *see also* SNCZ Sales Verification Report at 12.

¹² See Memorandum, “Less Than Fair Value Investigation of Strontium Chromate from France: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Société Nouvelle des Couleurs Zinciques,” dated concurrently with this memorandum (SNCZ Cost Calculation Memorandum) at 1-2 and SNCZ Cost Verification Report at 2.

¹³ See SNCZ Cost Calculation Memorandum at 1; *see also* SNCZ Cost Verification Report at 2.

¹⁴ See SNCZ Cost Calculation Memorandum at 2.

¹⁵ We found that the volume of SNCZ’s imports did not increase by more than 15 percent in the comparison period over its imports in the base period. *See Preliminary Determination*, 84 FR at 22439, and accompanying PDM at 15-16.

Because there is no prior history of injurious dumping, we next examined 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 whether there was likely to be material injury by reason of such sales, pursuant to section 735(a)(3)(A)(ii) of the Act. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.¹⁶ In this final determination, Commerce finds that the imputed knowledge standard is met because SNCZ's final margin is greater than 25 percent for EP sales and 15 percent for its CEP sales.¹⁷ Accordingly, we find the first criterion under section 735(a)(3)(A) is met.

Because we determined that the first criterion under the Act was met, we next examined whether imports from SNCZ were massive over a relatively short period, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h). It is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹⁸ Accordingly, in the *Preliminary Determination*, Commerce compared shipment data for the period October 2018 through March 2019 with the preceding six-month period of April 2018 through September 2018.¹⁹ Consistent with 19 CFR 351.206(i), we find that imports based on SNCZ's reported shipments of merchandise under consideration during the comparison period did not increase by more than 15 percent over its respective imports in the base period. Therefore, we find that there are no massive imports for SNCZ, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h), and thus that the second criterion is not met.²⁰

As a result, in accordance with section 735(a)(3) of the Act, we find that critical circumstances do not exist for SNCZ. In addition, we also determine, pursuant to section 735(a)(3) of the Act, that critical circumstances do not exist for all-other producers and exporters of strontium chromate in France.

¹⁶ See, e.g., *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).

¹⁷ See "Final Determination" section of the accompanying *Federal Register* notice.

¹⁸ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decisions Memorandum at Comment 3.

¹⁹ These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration.

²⁰ See *Preliminary Determination*, 84 FR at 22439, and accompanying PDM at 15-16.

VI. DISCUSSION OF ISSUES

Comment 1: Application of Adverse Facts Available due to Unverified Freight Expenses

The Petitioner's Case Brief²¹

- SNCZ was unable to reconcile its reported domestic inland and international freight expenses for selected observations during the sales verification.
- The corrected freight values recalculated by Commerce demonstrate significant reporting errors.
- It is likely that these errors exist for the freight expenses of all U.S. sales, distorting the U.S. net price calculation and, therefore, any margin calculated based on it.
- Due to the severity of these errors, Commerce should apply total AFA to SNCZ. If Commerce decides not to apply total AFA, it should assign partial AFA to the domestic inland and international freight expenses reported for every U.S. sale.

SNCZ's Rebuttal Brief²²

- The petitioner's claim that the errors in reporting warrant total AFA is unfounded.
- SNCZ participated and cooperated to the best of its ability throughout the investigation.²³
- The systematic error in the calculation of domestic inland and international freight led to these figures being over-reported as well as under-reported in certain instances. This is particularly true for international freight expenses, which were over-reported for all but three observations.
- Because these errors are minor, Commerce should, at most, assign neutral facts available by applying an average deviation to the domestic inland freight expenses for the U.S. sales.

Commerce's Position:

We disagree with the petitioner that total AFA is warranted due to SNCZ's inability to reconcile its domestic inland and international freight expenses. SNCZ submitted complete responses to Commerce's initial questionnaire and supplemental questionnaires, which we relied on for the *Preliminary Determination*.²⁴ However, we do find it appropriate to apply partial AFA to SNCZ's domestic inland and international freight expenses for which SNCZ was unable to provide support during our sales verification. As partial AFA, we have applied the highest recalculated domestic inland and international freight expenses based on verification findings to

²¹ See Petitioner's Case Brief at 1-3.

²² See SNCZ's Rebuttal Brief at 1-3.

²³ *Id.* at 2 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003) (*Nippon Steel*)).

²⁴ See SNCZ's February 13, 2019 Sections B and C Questionnaire Response (February 13 BCQR); see also SNCZ's March 22, 2019 Sections B and C Questionnaire Response (March 22 BCQR); SNCZ's April 1, 2019 Supplemental Sections B and C (April 1 SBCQR); and SNCZ's April 16, 2019 Combined Supplemental Sections A, B, and C Questionnaire Response (April 16 SABCQR).

all of SNCZ's U.S. sales for the final determination, pursuant to sections 776(a) and (b) of the Act.²⁵

In determining whether to apply AFA, Commerce must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. Sections 776(a)(1) and (2) of the Act provide that, if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, Commerce conducted its verification of SNCZ's information, including domestic inland and international freight expenses relating to U.S. sales, between June 10 and 14, 2019. At verification, Commerce discovered that SNCZ was not prepared to conduct verification of its domestic inland and international freight expenses, because the company was unable to explain or replicate the calculation used to derive the expense figures reported in its section C initial and supplemental questionnaire responses for U.S. sales, and this unpreparedness impeded Commerce's ability to conduct a thorough verification of SNCZ's reported domestic inland and international freight expenses.²⁶ Despite Commerce's attempts during verification to substantiate SNCZ's reported data regarding domestic inland and international freight expenses, as reported in SNCZ's questionnaire responses, Commerce was unable to verify SNCZ's domestic inland and international freight expense calculations.

Commerce also finds that SNCZ failed to follow the instructions detailed in Commerce's verification outline, specifically that the respondent needed to be fully prepared for the verification.²⁷ The purpose of providing a verification outline is to give respondents sufficient notice about the types of information and source documents that Commerce will examine, and to afford respondents sufficient time to compile the information. The verification outline was sent to SNCZ seven days prior to the start of verification. In it, Commerce stated that:

{T}he purpose of providing this agenda in advance of the actual verification is to allow you to brief the appropriate company personnel on the items to be covered and the type of documentation required to verify each item. The enclosed agenda is not necessarily all inclusive and we reserve the right to request any additional information or materials necessary for a complete verification.²⁸

Commerce also requested that counsel for SNCZ "reiterate to your client the statutory requirement for verification and note... it is in your client's interest to cooperate since failure to

²⁵ See SNCZ Sales Calculation Memorandum at Attachment 5 for Commerce's calculation.

²⁶ See SNCZ Sales Verification Report at 11.

²⁷ See Commerce's Letter, "Verification of Société Nouvelle des Couleurs Zinciques' Questionnaire Responses submitted in the Less-Than-Fair-Value Investigation of Strontium Chromate from France," dated June 3, 2019 at 2 (Verification Outline).

²⁸ *Id.* at 1.

permit verification may result in the Department of Commerce relying on adverse ‘facts available’ under section 776 of the Tariff Act of 1930, as amended (the Act).”²⁹

In addition, the verification outline stated the following:

{I}t is the responsibility of the respondent to be fully prepared for this verification. If your client is not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified, which may result in our basing the final determination of this investigation, possibly including information that is adverse to the interests of your client.³⁰

At no time prior to the verification did SNCZ contact Commerce seeking additional time to prepare for verification or asking questions about the verification procedures. When questioned about the domestic inland and international expense calculations at verification, SNCZ was unable to reproduce their reported expense figures.³¹ In an attempt to understand the reported expense figures, Commerce recalculated the domestic inland and international freight expenses for all of the “pre-selected” U.S. sales transactions at verification based on examination of original sales documentation.³² Through its recalculation of these expenses, Commerce discovered that none of the reported freight expense amounts reconciled to Commerce’s recalculated freight expense values. Accordingly, Commerce finds that use of facts otherwise available is appropriate, because the reported domestic inland and international freight expense calculations were unverified, pursuant to section 776(a)(2)(D) of the Act.

Further, section 776(b) of the Act provides that, if Commerce 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, Commerce may use an inference adverse to the interests of that party in selecting from the facts otherwise available. Moreover, although the “best of its ability” standard under section 776(b) of the Act “does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.”³³

In addition, the SAA explains that Commerce 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.”³⁴ In *Nippon Steel*, the Court of Appeals for the Federal Circuit explained that “{c}ompliance with the ‘best of its ability’ standard is determined by assessing whether respondent has put forth its maximum effort to provide {Commerce} with full and complete answers to all inquiries in an investigation.”³⁵ Further, affirmative evidence of bad faith on the

²⁹ *Id.* at 1-2.

³⁰ *Id.* at 3.

³¹ See SNCZ Sales Verification Report at 11.

³² *Id.*

³³ See *Nippon Steel*, 337 F.3d at 1382.

³⁴ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

³⁵ See *Nippon Steel*, 337 F.3d at 1382.

part of a respondent is not required before Commerce may make an adverse inference.³⁶ According to *Nippon Steel*, “the statutory trigger for Commerce’s consideration of an adverse inference is simply a failure to cooperate to the best of respondent’s ability, regardless of motivation or intent.”³⁷

We find that SNCZ’s inability to replicate how it derived its expense figures at verification demonstrates inattentiveness (resulting in a lack of preparation) and/or inadequate recordkeeping. As such, we find that SNCZ failed to put forth maximum effort to provide verifiable information regarding its reported freight expenses during verification. Therefore, SNCZ failed to act to the best of its ability by submitting domestic and international freight expense calculation figures which it was unable, or unprepared, to support at verification. Additionally, Commerce’s recalculation of the domestic and international freight expenses at verification based on source documentation demonstrated that SNCZ’s reported domestic and international freight expense calculation figures were incorrect. Therefore, the application of an adverse inference in selecting from the facts available is appropriate, pursuant to section 776(b) of the Act.

Moreover, although SNCZ argues that it is appropriate to assign neutral facts available to its freight expenses and apply an average deviation to domestic inland freight, we disagree. Notwithstanding our conclusion that SNCZ’s failure to support its reported freight expenses warrants the application of partial AFA, we also did not collect information at verification for all sales.³⁸ We may reasonably conclude, therefore, that because the reported domestic inland and international freight expenses for all sales individually tested at verification were demonstrated to be incorrect,³⁹ that all of the reported freight expenses are unreliable, and cannot be used to calculate an accurate freight expense. In other words, although our recalculation of the freight expenses at verification demonstrated that the reported freight expenses for the examined transactions are incorrect, and we, therefore, find that the reported freight expenses for all sales are unreliable, we do not know if the freight expenses reported for the unexamined sales are incorrect by the same amount as those reported for the examined sales. Thus, we find that adjusting all reported freight expenses by applying an average deviation based only on the examined sales would be inappropriate, as doing so could lead to a more favorable result for SNCZ than if SNCZ had accurately reported its freight expenses. Therefore, we have assigned partial AFA for SNCZ’s domestic inland and international freight expenses, and applied the highest recalculated domestic inland and international freight expenses from verification to all of SNCZ’s U.S. sales for the final determination, pursuant to section 776(b) of the Act.⁴⁰

³⁶ See *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

³⁷ See *Nippon Steel*, 337 F.3d at 1383.

³⁸ See SNCZ Sales Verification Report at 11.

³⁹ *Id.*

⁴⁰ See SNCZ’s Final Analysis Memo for Commerce’s calculation.

Comment 2: Adjustment to Cost of Manufacturing for Unreported Depreciation

The Petitioner's Case Brief⁴¹

- As noted in Commerce's cost verification report, SNCZ omitted certain depreciation expenses attributable to the factory boiler.
- Commerce should increase SNCZ's fixed overhead to account for the unreported depreciation expenses.

SNCZ's Rebuttal Brief⁴²

- SNCZ states that it inadvertently omitted certain depreciation expenses from its reported cost of manufacturing.
- SNCZ agrees with the petitioner that Commerce should make the suggested adjustment.

Commerce's Position:

For the *Preliminary Determination*, we note that SNCZ did not include depreciation expenses attributable to the factory boiler in its cost of manufacturing. At verification, Commerce discovered that SNCZ excluded from its submitted costs a certain amount in depreciation costs attributable to the boiler at the factory.⁴³ As this depreciation cost is related to the cost of manufacturing, we are treating this expense as part of SNCZ's fixed overhead. Therefore, for the final determination, we have adjusted SNCZ's reported fixed overhead costs to include depreciation attributable to the factory boiler.⁴⁴

Comment 3: Adjustment to G&A Expense Rate for Certain Expenses Identified at Verification

The Petitioner's Case Brief⁴⁵

- Commerce should, as noted in the cost verification report, adjust the cost of goods sold denominator used in the calculation of the G&A expense rate to exclude the portion of depreciation costs classified as G&A expenses.
- Commerce should, as noted in the cost verification report, adjust SNCZ's net G&A expenses to include certain administrative expenses which had been omitted from the calculation.

⁴¹ See Petitioner's Case Brief at 3.

⁴² See SNCZ's Rebuttal Brief at 3.

⁴³ See SNCZ Cost Verification Report at 2 and 25.

⁴⁴ *Id.*

⁴⁵ See Petitioner's Case Brief at 3-4.

SNCZ's Rebuttal Brief⁴⁶

- SNCZ states that it agrees that the adjustments noted in the cost verification report are justified.

Commerce's Position:

In the *Preliminary Determination*, SNCZ did not include certain administrative expenses as part of its net G&A expenses. At verification, Commerce noted that a portion of SNCZ's depreciation expenses were misclassified as G&A expenses.⁴⁷ Commerce agrees with the petitioner and respondent that these errors should be corrected to reflect SNCZ's actual G&A expenses. Accordingly, for the final determination, we have revised the calculation of SNCZ's net G&A expenses (*i.e.*, the numerator in the G&A expense rate calculation) to include the administrative expenses noted in the cost verification report which had been excluded erroneously.⁴⁸ Additionally, based on the cost verification report, we have adjusted the cost of goods sold denominator used in the calculation of SNCZ's G&A expense rate to exclude the depreciation expenses which had been classified as G&A.⁴⁹

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final dumping margins in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.



Agree



Disagree

9/30/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴⁶ See SNCZ's Rebuttal Brief at 3.

⁴⁷ See SNCZ Cost Verification Report at 2, 24, and 25.

⁴⁸ *Id.*

⁴⁹ *Id.*