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Administrative Review
POR: 11/14/2016 - 4/30/2018
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November 14, 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 Results of the
2016-2018 Administrative Review of the Antidumping Duty Order
on Certain Carbon and Alloy Steel Cut-To-Length Plate from
France

I. SUMMARY

We analyzed the comments of the interested parties in the 2016-2018 administrative review of the antidumping duty order on certain carbon and alloy steel cut-to-length plate (CTL plate) from France. As a result of our analysis, we made changes to the margin calculations for the only producer/exporter subject to this review, Industeel France S.A.S (Industeel). We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is a complete list of issues in this administrative review for which we received comments from interested parties:

Comment 1: Use of Facts Available to Address a Reporting Error
Comment 2: Calculation of the Variable Cost of Manufacturing
Comment 3: Treatment of the Exceptional Depreciation Expenses

II. BACKGROUND

On July 17, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.¹ The period of review (POR) is November 14, 2016 through April 30, 2018.

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Preliminary Results of the Antidumping Duty Administrative Review; 2016–2018*, 84 FR 34125 (July 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.



We invited interested parties to comment on the *Preliminary Results*.² On August 16, 2019, we received case briefs from SSAB Enterprises, LLC (the petitioner) and Industeel.³ On August 21, 2019, we received rebuttal briefs from the petitioner and Industeel.⁴ After analyzing the comments received, we changed the weighted-average dumping margin for Industeel from that presented in the *Preliminary Results*.

III. MARGIN CALCULATIONS

For Industeel, we calculated export price and normal value using the same methodology stated in the *Preliminary Results*, except as follows:

- We corrected a typographical error in the name of the revised indirect selling expense variable in the home market sales program.⁵
- We made an adjustment to fixed overhead (FOH) costs.⁶ *See* Comment 2.
- We made an adjustment to general and administrative (G&A) expenses.⁷ *See* Comment 3.

IV. DISCUSSION OF THE ISSUES

Comment 1: Use of Facts Available to Address a Reporting Error

Petitioner's Case Brief

- At verification, Commerce found that Industeel misreported the quality (QUALITYU), minimum carbon content (CARBONU), and minimum specified chromium content (CHROMIUMU) for one of its U.S. sales.⁸ In the *Preliminary Results*, Commerce corrected these product characteristics and the associated control number; however, this correction does not sufficiently address the misreporting issue.⁹
- The purpose of verification is to assess the reliability of the information placed on the record by a respondent by using spot checks, from which Commerce extrapolates the

² *Id.*, 84 FR at 34126.

³ *See* Petitioner's Case Brief, "Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Petitioner's Case Brief," dated August 16, 2019 (Petitioner Case Brief); and Industeel's Case Brief, "Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Case Brief of Industeel France S.A.," dated August 16, 2019 (Industeel Case Brief).

⁴ *See* Petitioner's Rebuttal Brief, "Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Petitioner's Rebuttal Brief," dated August 21, 2019 (Petitioner Rebuttal Brief); and Industeel's Rebuttal Brief, "Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Rebuttal Brief of Industeel France S.A.," dated August 21, 2019 (Industeel Rebuttal Brief).

⁵ *See* Memorandum, "Calculations for the Final Results," dated concurrently with this memorandum.

⁶ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Industeel France S.A.," dated concurrently with this memorandum (Final Cost Calculation Memorandum).

⁷ *Id.*

⁸ *See* Petitioner Case Brief at 2.

⁹ *Id.*

reliability of the entire reported dataset.¹⁰ Verifications are not meant to be comprehensive examinations of a company's business.¹¹

- When Commerce cannot tie the data in a respondent's U.S. sales data to source documentation using spot checks, the agency cannot have confidence that reported information is accurate or reliable.¹² Under such circumstances, this information cannot be verified, and Commerce shall use facts otherwise available to fill gaps in the record.¹³
- Industeel claims that its misreporting error occurred because its SAP system listed incorrect chemical composition values for this product and that it used SAP to report the product characteristics for its control numbers. However, if this information was not accurate in the SAP system, then the manufactured products would have not conformed to the customers' specification and should have been returned. The record shows there were no such returns.¹⁴ Accordingly, Industeel's proffered explanation is implausible.
- Commerce examined additional sales to test the accuracy of Industeel's reporting and found that Industeel incorrectly reported the product characteristics of one out of the thirteen control numbers it examined. The only reasonable conclusion Commerce can draw from this error is that, through its misreporting, Industeel withheld information regarding its product characteristics.¹⁵
- Thus, in addition to the correction made in the *Preliminary Results*, Commerce must rely on facts available and: 1) determine a margin for the corrected sale; 2) apply this margin to the percentage of Industeel's sales with incorrect product characteristics; and 3) add this additional amount to the extent of dumping otherwise determined to calculate Industeel's weighted-average dumping margin for the final results.¹⁶

Industeel's Rebuttal Brief

- At verification, Commerce reviewed Industeel's production records in its SAP system, and the standard specification sheets on which Industeel bases its production and noted no discrepancies with Industeel's reported product characteristics beyond those for the sale in question.¹⁷
- The record shows that, of the 25 sales for which Commerce examined control numbers at verification, Industeel misreported only three individual product characteristics out of the 400 reported (*i.e.*, 25 sales multiplied by 16 individual product characteristics), which is only 0.75 percent of the reported product characteristics.¹⁸

¹⁰ See Petitioner Case Brief at 1 (citing *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) (*Steel Threaded Rod from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.A.2).

¹¹ *Id.* at 3 (citing *Micron Tech v. United States*, 117 F. 3d 1386, 1396 (Fed. Cir. 1997); and *Monsanto Co. v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990)).

¹² *Id.* at 1 (citing *Steel Threaded Rod from China* IDM at Comment 5.A.2).

¹³ See Petitioner Case Brief at 2 (citing section 776 of the Tariff Act of 1930, as amended (the Act)).

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 2-4 (citing section 776 of the Act).

¹⁶ *Id.* at 4.

¹⁷ See Industeel Rebuttal Brief at 3.

¹⁸ *Id.* at 3.

- This situation does not merit the application of facts available, because it does not involve issues such as numerous instances of unsupported reported data, inconsistent responses by company officials, or significant alteration of data at verification without disclosure to Commerce.¹⁹
- The use of facts otherwise available is only appropriate to fill gaps when Commerce must rely on other sources of information to complete the factual record.²⁰ Here, there is no necessary factual information missing from the record.
- Furthermore, the petitioner's proposal amounts to applying adverse facts available, which is entirely inappropriate and unlawful in this instance. The record clearly demonstrates that Industeel has cooperated fully in this review.²¹

Commerce's Position: In the *Preliminary Results*, we corrected three misreported product characteristics (*i.e.*, QUALITYU, CARBONU, and CHROMIUMU) and the resulting control number for one U.S. sale based on our findings at verification; we also revised the associated control number in Industeel's cost data.²² For the final results, we continue to rely on this approach to address Industeel's misreporting of three of the sixteen product characteristics for this sale. Further, the application of facts available is not warranted, because Commerce has the correct information on which to base its margin calculations.

Section 776(a) of the Act provides that if: (1) necessary information is not available on the record; or (2) an interested party withholds information requested by Commerce; fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to section 782(c)(1) and (e) of the Act; significantly impedes the proceeding; or provides such information, but the information cannot be verified; Commerce shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this review, Industeel provided all the necessary information for Commerce to verify the reported product characteristics. Specifically, Industeel provided SAP production records and standard specification sheets for each of the control numbers examined at verification.²³ Furthermore, we find that Industeel's product characteristics could be verified and that Industeel did not withhold product characteristic information. Thus, it is inappropriate to apply facts available as the petitioner proposes for our final results.

We agree with the petitioner that verification is intended to be a spot check of a respondent's data; however, we disagree that, in this review, we were unable to tie the reported data to Industeel's SAP system and accounting records. At verification, we examined 25 sales and their associated product characteristics.²⁴ As a result of our examination, we found that Industeel misreported only three product characteristics for one control number and this control number

¹⁹ *Id.* at 4-5 (citing *Universal Polybag Co. v. United States*, 577 F. Supp. 2d 1284, 1295 (CIT 2008)).

²⁰ *Id.* at 4 (citing *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F. 3d 1333, 1346 (Fed. Cir. 2011)).

²¹ *Id.* at 5-6.

²² See Memorandum, "Calculations for the Preliminary Results," dated July 10, 2019, at 2-3.

²³ See Memorandum, "Verification of the Sales Response of Industeel S.A.S. (Industeel) in the 2016-2018 Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from France," dated June 7, 2019 (Sales Verification Report), at 10-13, and SVE-8, SVE-9, and SVE-19 through SVE-33.

²⁴ *Id.* at 6 and SVE-8, SVE-9, SVE-19 through SVE-32, and SVE-33.

only applied to one U.S. sale.²⁵ Moreover, we reviewed every combination of the product characteristics QUALITYU, CARBONU, and CHROMIUMU that Industeel reported for its U.S. sales, and only found that Industeel misreported the combination at issue here.²⁶ Thus, our spot checks demonstrated that Industeel correctly reported all other combinations of the product characteristics QUALITYU, CARBONU, and CHROMIUMU for its U.S. sales. Accordingly, we find that we were able to verify Industeel's reported product characteristics and control numbers for its home market and U.S. sales and, as a result, there is no basis to rely on the use of facts available to address this issue.

Despite the petitioner's doubts regarding Industeel's explanation at verification for its reporting errors, we do not find, based on this administrative record, that Industeel withheld information regarding its product characteristics. At verification, when we found the reporting error, company officials stated that, for this specification, Industeel's SAP system listed the incorrect chemical composition values, which Industeel used to assign the reported product characteristics.²⁷ When we requested supporting documentation regarding the product characteristics reported for several additional sales, Industeel provided us with these records, and we found no other issues with the reported product characteristics for any additional control numbers.²⁸ At no point did Industeel refuse to provide us with information regarding its reported product characteristics.

Accordingly, in this situation, Commerce has all of the verified information needed to perform its margin calculations, and the use of facts otherwise available is not needed. Further, we find that the facts of this situation do not warrant finding that Industeel did not act to the best of its ability based on the fact that it incorrectly reported three physical characteristics for a single product control number. Consequently, we continued to correct the product characteristics and control number for this single U.S. sale and its associated cost of production in the same manner as in the *Preliminary Results*.

Comment 2: Calculation of the Variable Cost of Manufacturing

Industeel's Case Brief

- In the *Preliminary Results*, Commerce made a clerical error in calculating the variable cost of manufacturing (VCOM) by deducting the reported FOH without adjusting for the cost increase to the total cost of manufacturing (TCOM) pursuant to the correction presented at the cost verification.²⁹

²⁵ *Id.* Industeel did not sell this control number in the home market during the POR, and we noted no discrepancies with the product characteristics that Industeel reported for its home market sales.

²⁶ Compare Industeel's Supplemental Sections A-C Questionnaire Response at Exhibit C-27 with Sales Verification Report at SVE-8, SVE-9, SVE-19 through SVE-20, SVE-23 through SVE-32, and SVE-33.

²⁷ See Sales Verification Report at 6.

²⁸ See Sales Verification Report at 10.

²⁹ See Industeel Case Brief at 1.

Petitioner's Rebuttal Brief

- Industeel explained that its variances adjust for the costs of materials and processing, and Commerce explained that its adjustment to TCOM was made to correct an understatement of variances. Thus, although the percentage amount of the adjustment was calculated and applied to Industeel's TCOM, it was reflective only of changes in materials and processing, not of FOH. As a result, Industeel's reported FOH should not be adjusted.³⁰

Commerce's Position: We disagree that the adjustment to TCOM we made in the *Preliminary Results* was limited to variances for materials and processing. As seen in the Cost Verification Report, Industeel's reported costs include calculated variances for materials, processing (*i.e.*, VOH), and depreciation (*i.e.*, FOH).³¹ As such, the total variance for which the adjustment to TCOM was made includes these three variance categories that result from the differences between the company's standard and actual costs. Thus, because the adjustment to TCOM for the total variance applies to both VCOM and FOH, we adjusted the FOH by the variance adjustment percentage for our final results.³²

Comment 3: Treatment of the Exceptional Depreciation Expenses

Industeel's Case Brief

- Commerce's determination to depart from Industeel's reported costs, which are based on non-accelerated depreciation, was unreasonable.³³
- Although French generally accepted accounting principles (GAAP) allows for the use of accelerated depreciation methods, it recognizes as extraordinary income or expenses the difference between accelerated and non-accelerated depreciation. Commerce's reliance on the accelerated depreciation, by including such an extraordinary expense, is inappropriate and distortive.³⁴
- In the alternative, if Commerce decides to include depreciation on the accelerated basis, then it should also include the extraordinary income, where the accelerated depreciation is less than the non-accelerated depreciation.³⁵

³⁰ See Petitioner Rebuttal Brief at 1 and 2.

³¹ See Memorandum, "Verification of the Cost 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 10, 2019 (Cost Verification Report), at Exhibit CVE-8.

³² See Final Cost Calculation Memorandum.

³³ See Industeel Case Brief at 1-4 (citing section 773(f)(1)(A) of the Act).

³⁴ *Id.* (citing *American Silicon Tech. v. United States*, 23 CIT 237 (1999) (*American Silicon*), where the Court found that Commerce's use of the respondent's accelerated depreciation was contrary to law and distortive).

³⁵ *Id.* at 4-5.

Petitioner's Rebuttal Brief

- Commerce has relied on Industeel's financial statements, and those statements include the exceptional charges. The revised figures Commerce employed are consistent with the agency's statutory obligations.³⁶
- Industeel's accelerated depreciation is kept as part of its financial records and is consistent with French GAAP. Industeel has not demonstrated that the use of the accelerated depreciation distorts its cost reporting. Thus, Commerce should continue for its final results to include the "exceptional charges" as part of Industeel's costs.³⁷
- In a later decision, the Court of International Trade (CIT) declined to follow the *American Silicon* decision cited by the respondent and found that the same accelerated depreciation program that was rejected in that case was acceptable.³⁸
- The record does not support the inclusion of exceptional income. Industeel characterizes the extraordinary income as "the adjustment for assets where tax is greater than book depreciation;" however, the record does not provide this explanation of the extraordinary income, which on the financial statements is defined as "Reversals of provisions and transfer of charges." Thus, there is no basis for including the extraordinary income as an offset to the extraordinary expense.³⁹

Commerce's Position: We agree with the petitioner, in part, and have continued to adjust the reported costs to reflect the total depreciation expense recorded on Industeel's audited financial statements. In accordance with section 773(f)(1)(A) of the Act, Commerce will rely on a respondent's normal books and records where those records are prepared in accordance with the respondent's home country GAAP and reasonably reflect the costs of producing the merchandise. Industeel reported its costs to Commerce using a depreciation expense calculated on a straight-line basis.⁴⁰ However, for financial statement purposes, Industeel calculates its depreciation expense using an accelerated depreciation method, which has the effect of realizing more depreciation on its assets in earlier years of use and less depreciation in the later years of use, as compared to using a straight-line depreciation method. In Industeel's audited financial statements, the total depreciation expense is reported in two parts. Total operating expenses include the depreciation expense calculated using the straight-line method, while the difference in the calculated depreciation expense using an accelerated method versus the straight-line method is reported as exceptional depreciation.⁴¹ Because the total depreciation recorded on the audited financial statements represents depreciation calculated using an accelerated method, Industeel effectively adopted the use of accelerated depreciation for its audited financial statements in accordance with French GAAP. Thus, by including the total depreciation expense as recorded on the audited financial statements, we followed Industeel's normal books and

³⁶ See Petitioner Rebuttal Brief at 1-2.

³⁷ *Id.* at 2-3 (citing section 773(f)(1)(A) of the Act; *Aimcor v. United States*, 69 F. Supp. 2d 1345, 1351 n.3 (CIT 1999) (*Aimcor*); *American Silicon*, 23 CIT at 243-44; and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 62114 (October 3, 2002), and accompanying IDM at Comment 29).

³⁸ *Id.* at 3 (citing *Aimcor*, 69 F. Supp. 2d at 1350-1352).

³⁹ *Id.* at 4.

⁴⁰ See Industeel Case Brief at 3 (citing Cost Verification Report at 21).

⁴¹ See Industeel Cost Verification Report at CVE-5, at IF-C-853.

records kept in accordance with French GAAP. The use of an accelerated method of depreciating assets, which recognizes that fixed assets lose more value early in their useful life versus later, is not unusual or unreasonable.⁴²

We disagree with Industeel that *American Silicon* supports its position that including accelerated depreciation as part of Industeel's costs is distortive.⁴³ As the petitioner notes, in a later decision, the CIT declined to follow *American Silicon* and, instead, supported Commerce's use of accelerated depreciation as recorded on the respondent's audited and verified financial records.⁴⁴ Moreover, as mentioned above, the use of an accelerated depreciation method is not unreasonable. As we noted at our cost verification, the production of CTL plate requires the use of sophisticated production machinery. It is not unusual or uncommon that such equipment, machinery, and other fixed assets would bear more depreciation expense in the assets' earlier years of usage compared to the assets' later years of usage when production efficiency declines due to high-heat, high-friction continuous usage.⁴⁵ The accounting logic that follows the use of an accelerated depreciation method is that, in the early years of higher efficiency, the asset is of more value (economically) to the company and, therefore it is reasonable to use an accelerated depreciation method, *i.e.*, to recognize more depreciation expenses during the early years of using a fixed asset.⁴⁶ We also note that, in this case, unlike the facts in *American Silicon*, Industeel's reporting does not shift to years prior to the POR; most of the depreciation is attributable to the production of CTL plate during the POR.⁴⁷

Finally, as discussed above, the exceptional income and expense reported on Industeel's fiscal year 2017 financial statements represents the difference between the accelerated and straight-line depreciation, and such difference may result in an expense or income, depending on the timing of the depreciation of an asset. Therefore, we agree with Industeel that the exceptional expense recorded on Industeel's fiscal year 2017 audited financial statements, which relates to the accelerated depreciation calculation, should be offset by the corresponding exceptional depreciation income also recorded on these financial statements. Contrary to the petitioner's claim, the record shows that such exceptional income also relates to depreciation.⁴⁸ Therefore, for the final results, we have adjusted the reported costs to reflect the total depreciation recognized in Industeel's 2017 audited financial statements prepared in accordance with French GAAP.

⁴² See, e.g., *Final Results of Antidumping Duty Administrative Review: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002) (*Greenhouse Tomatoes from Canada*), and accompanying IDM at Comment 4.

⁴³ See *American Silicon*, 23 CIT at 243-44.

⁴⁴ See *Aimcor*, 69 F. Supp. 2d at 1351 n.3. The CIT previously reached a similar holding as in *Aimcor* on this issue. See *Hercules, Inc. v. United States*, 673 F. Supp. 454, 490-91 (CIT 1987).

⁴⁵ See Cost Verification Report at CVE-4.

⁴⁶ See *Greenhouse Tomatoes from Canada* IDM at Comment 4; see also Industeel Case Brief at 3.

⁴⁷ See Cost Verification Report at CVE-5, page IF-C-853.

⁴⁸ *Id.*

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

☒

Agree

☐

Disagree

11/14/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance