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Investigation
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May 10, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Affirmative Determination in
the Less-Than-Fair-Value Investigation of Methionine from France

I. SUMMARY

The Department of Commerce (Commerce) finds that methionine 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, 2019 through June 30, 2020. Further, Commerce finds that critical circumstances exist for Adisseo France SAS and Commentary but not for all other producers and exporters.

After analyzing the post-preliminary comments submitted by interested parties, we decided to make no changes to the *Preliminary Determination*.¹ We recommend that you approve the position described in the “Discussion of the Issue” section of this memorandum. Below is the sole issue in this investigation for which we received comments from interested parties:

Comment: Whether to Retain Adisseo’s BPI on the Record

II. BACKGROUND

On March 4, 2021, Commerce published in the *Federal Register* the *Preliminary Determination*.² Adisseo France SAS and Commentry (collectively, Adisseo) were selected as the mandatory respondents in this investigation. Further, Commerce determined that these two companies comprise a single entity for the purposes of this investigation. On January 22, 2021,

¹ See *Methionine from France: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 86 FR 12627 (March 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² *Id.*



Adisseo notified Commerce that it was withdrawing its participation from the investigation.³ On March 25, 2021, Adisseo submitted a letter in lieu of a case brief.⁴ On April 1, 2021, the petitioner, Novus International, Inc. (Novus), a domestic producer of methionine, submitted a rebuttal brief.⁵ No parties requested a hearing.

III. FINAL PARTIAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, we found that critical circumstances existed with respect to imports of subject merchandise produced and exported by Adisseo but did not exist for “all other” producers and exporters. Specifically, we preliminarily found no evidence of a history of injurious dumping of the subject merchandise pursuant to Section 733(e)(1)(A)(i) of the Act.⁶ Therefore, we considered whether importers knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales within the meaning of section 733(e)(1)(A)(ii) of the Act. We found that Adisseo’s preliminary estimated weighted-average dumping margin of 43.82 percent met the threshold for imputing knowledge of LTFV sales and that the remaining statutory elements supported an affirmative determination with respect to Adisseo. In contrast, we found the estimated weighted-average dumping margin assigned to all other producers and exporters fell below the threshold sufficient to impute knowledge of LTFV sales and, as a result, made a preliminary negative determination with respect to these entities.⁷ The petitioner submitted comments stating that we should continue to find critical circumstances exist in regards to imports of subject merchandise from France produced and exported by Adisseo.⁸

Consistent with our *Preliminary Determination*,⁹ we find that critical circumstances exist with respect to imports of subject merchandise produced and exported by Adisseo. The estimated weighted-average dumping margin determined for Adisseo exceeds the threshold necessary to impute knowledge of dumping (*i.e.*, 25 percent for export price (EP) sales and 15 percent for constructed export price (CEP) sales) and the ITC’s preliminary affirmative injury determination remains sufficient to impute knowledge of likely material injury.¹⁰ Moreover, as part of our AFA determination, we have continued to determine that, pursuant to section 776(b) of the Act, Adisseo shipped subject merchandise to the United States in “massive” quantities during the comparison period,¹¹ thereby fulfilling the criteria for “massive imports” under section 733(c)(1)(B) of the Act and 19 CFR 351.206(h).

³ See Adisseo’s Letter, “Methionine from France: Withdrawal from Investigation and Withdrawal of Proprietary Information,” dated January 22, 2021.

⁴ See Adisseo’s Letter, “Adisseo France SAS’s (Adisseo’s) Letter, Antidumping Duty Investigation Methionine from France: Adisseo Letter in Lieu of Case Brief,” dated March 25, 2021 (Adisseo’s In-Lieu-Of Letter).

⁵ See Petitioner’s Letter, “Methionine from France: Petitioner’s Rebuttal Brief,” dated April 1, 2021 (Petitioner’s Rebuttal Brief).

⁶ See *Preliminary Determination* Preliminary Decision Memorandum at 10.

⁷ *Id.* at 11.

⁸ See Petitioner’s Rebuttal Brief at 4.

⁹ See *Preliminary Determination* Preliminary Decision Memorandum at 11

¹⁰ *Id.*

¹¹ *Id.* at 11 and 12.

We also continue to find that the estimated weighted-average dumping margin determined for all-other producers and exporters is not sufficient to impute knowledge to importers that critical circumstances exist in regards to imports of subject merchandise from all other producers and exporters.¹² Moreover, because there is neither a history of dumping nor knowledge on the part of importers of sales at LTFV regarding all other producers and exporters of subject merchandise from France, we continue to find it unnecessary to address the question of whether there were massive imports of subject merchandise from all other producers and exporters over a relatively short period following the initiation of the investigation.¹³ Accordingly, Commerce continues to find that critical circumstances do not exist for all other producers and exporters.

IV. DISCUSSION OF THE ISSUE

Comment: Whether to Retain Adisseo's BPI on the Record

Adisseo's Comments:

- Commerce made several errors in its *Preliminary Determination* and should correct them in its final determination.¹⁴
- Commerce's decision to perform a dumping analysis for Adisseo using Adisseo's own business proprietary information (BPI) despite Adisseo's request for the return of its BPI and the removal of its BPI from the record is "erroneous" and is contrary to Commerce policy.¹⁵
- Submission of BPI from interested parties is entirely voluntary, and thus is fundamental to the effectiveness of Commerce's antidumping remedies.¹⁶ Commerce has affirmed a party's ability to control its BPI in previous determinations, and has recognized a need to balance Commerce's ability to request BPI from interested parties with its ability to maintain the integrity of a proceeding.¹⁷
- Commerce has explained that applying adverse facts available (AFA) generally permits a party to withdraw BPI while protecting the integrity of an antidumping (AD) or countervailing duty (CVD) proceeding.¹⁸ Therefore, "{Commerce}'s normal practice is to allow parties to withdraw their BPI submissions from the administrative record upon request."¹⁹
- In this investigation, Adisseo requested the return of its BPI from Commerce, which other interested parties have requested in numerous other proceedings,²⁰ and submitted its

¹² *Id.* at 11.

¹³ *Id.* at 12.

¹⁴ See Adisseo's In-Lieu-Of Letter at 2.

¹⁵ *Id.*

¹⁶ *Id.* (citing section 777 of the Act).

¹⁷ *Id.* at 3 (citing *Allegheny Ludlum Corp. v. United States*, 27 CIT 1461, 1467 (September 29, 2003) (CIT 2003) (*Allegheny Ludlum*)).

¹⁸ *Id.* (citing *Allegheny Ludlum*, 27 CIT at 1467).

¹⁹ *Id.* (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006) at 14170 and 14171; *Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to Length Carbon Steel Plate from Romania*, 71 FR 7008 (February 10, 2006) at 7008 and 7009; and *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 66 FR 56272 (November 7, 2001) at 56272 and 56273).

²⁰ *Id.*

withdrawal request prior to Commerce's *Preliminary Determination* and prior to Commerce's notice of Adisseo's preliminary estimated weighted-average dumping margin.²¹

- Adisseo's reason for its withdrawal from this investigation, *i.e.*, that it was discontinuing all shipments of subject merchandise (methionine) from France to the United States, is "compelling" and was made irrespective of the outcome of this investigation.²²
- Adisseo's information is not required to maintain the integrity of this investigation, because: (1) Adisseo's responses have been complete and accurate; and (2) there is not a methionine producer in France other than Adisseo, and therefore no other producer of methionine from France will be subject to the "All Others" rate.²³
- Commerce should return Adisseo's BPI as requested in its Letter of Withdrawal and should apply to Adisseo the estimated weighted-average dumping margin for all-other producers and exporters of 16.17 percent in the final determination of the instant investigation.²⁴

Petitioner's Rebuttal Comments:

- Commerce should reject Adisseo's request in Adisseo's In-Lieu-Of Letter and not rely on the dumping margin alleged in the Petition for Commerce's determination of Adisseo's estimated weighted-average dumping margin. Furthermore, Commerce should continue to find as it did in the *Preliminary Determination*, that methionine had been sold at LTFV during the POI, that Commerce should apply AFA in determining an estimated weighted-average dumping margin for methionine produced and exported by Adisseo,²⁵ and that Commerce should continue to use the 16.17 percent rate as the "All-Others" rate.²⁶
- In its final determination, Commerce should continue to find critical circumstances existed for subject merchandise produced and exported to the United States by Adisseo and should suspend liquidation of all such imports of subject merchandise from up to ninety days before the publication date.²⁷
- Adisseo cited to *Allegheny Ludlum* in its argument as an example in which Commerce recognized the potential negative impacts of refusing a respondent's request to withdraw its BPI from a record,²⁸ but ignores a key aspect of Commerce's reasoning that the U.S. Court of International Trade (CIT) cited in *Live Cattle from Canada* that stated that it is within Commerce's rights to deny a respondent's request to return its BPI.²⁹
- Adisseo's In-Lieu-Of letter does not address the fact that Adisseo would benefit from the removal of its BPI from the record of this investigation in the form of a lower estimated weighted-average dumping margin of 16.17 percent, rather than the 43.82 percent rate calculated in the *Preliminary Determination*, which is almost triple the rate alleged in the

²¹ Commerce notified Adisseo of its preliminary dumping margin on February 25, 2021.

²² See Adisseo's In-Lieu-Of Letter at 3 and 4.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ See Petitioner's Rebuttal Brief at 1 and 4.

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ See Adisseo's In-Lieu-Of Letter at 3;

²⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56739, 56734 (October 21, 1999) (*Live Cattle from Canada*).

Petition.³⁰ The Petition rate is the only rate that Commerce would have available in its determination of an estimated weighted-average dumping rate for Adisseo, if Adisseo's BPI were removed from the record, which is a benefit to Adisseo.

- Despite Adisseo's assertion that its information is not needed to preserve the integrity of this investigation and that its responses throughout this investigation have been "complete and accurate,"³¹ Adisseo has provided positive evidence of an attempt to benefit from its withdrawal from the investigation. Adisseo's letter asserts that Commerce should ignore Adisseo's information submitted to the record in response to Adisseo's letter filed after its withdrawal from the investigation.
- Not only should Commerce ignore Adisseo's In-Lieu-Of Letter, but Commerce should also reject the letter on the grounds that Adisseo's argument presented therein is inconsistent with its decision not to participate further in the investigation.

Commerce's Position: We disagree with Adisseo that Commerce's decision to retain Adisseo's BPI information in the *Preliminary Determination* is "erroneous." As discussed below, the "voluntary" nature of a respondent's participation does not compel Commerce to acquiesce to a respondent's request to return its BPI, where such BPI is necessary to preserve the integrity and effectiveness of the remedy provided for under the law. For the final determination, we continue to retain Adisseo's BPI on the record. Additionally, for the final determination, we continue to base Adisseo's estimated weighted-average dumping margin on the highest individual dumping margin based on an average-to-average comparison calculated using record information provided by Adisseo.

As we noted in *Live Cattle from Canada*, Commerce is tasked with administering the antidumping duty law and possesses the inherent authority to protect the integrity of that process. In determining whether to permit a respondent to withdraw information, the agency must weigh competing interests, both of which are important to the administration of the antidumping law. Commerce must balance any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain BPI in future proceedings, against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies.³²

As we noted then, Commerce does not have subpoena power. The submission of information is voluntary. To administer the antidumping law, Commerce depends heavily upon the willingness of the parties to provide extensive BPI. As a result, there is a public interest in preserving the trust of companies subject to its proceedings that such information will have limited use and will remain largely within the control of the companies submitting such information. However, once a party voluntarily submits BPI in an antidumping proceeding, the submitting party relinquishes some control over that information to Commerce. For example, after Commerce issues a final determination, a submitting party may not withdraw its BPI. Once the record of a proceeding is closed, no information may be added to, or withdrawn from, the administrative case record.³³

³⁰ See Petitioner's Rebuttal Brief at 3 (citing *Methionine from France*, 86 FR 12627, 12628 (March 4, 2021)).

³¹ *Id.* (citing Adisseo's In-Lieu-Of Letter at 4).

³² See, e.g., *Live Cattle from Canada*.

³³ *Id.*

Equally compelling is the public's interest in the agency enforcing the antidumping law and preserving the integrity of its proceedings. While there is no statutory provision expressly dealing with the withdrawal of business proprietary information once it has been submitted, the courts have recognized "the inherent power of an administrative agency to protect the integrity of its own proceedings."³⁴ Thus, the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.³⁵

In practice, the Department has allowed submitting parties to withdraw their business proprietary submissions from the administrative record.³⁶ In addition, however, there is precedent for not allowing a party to withdraw its information from the record of a proceeding. Specifically, in *CAAS Romania*,³⁷ a respondent requested that its information be removed from the record; however, in that case, Commerce retained its BPI and public information on the record in order to prevent the manipulation of the final weighted-average dumping margins. Additionally, in *CAAS Romania*, Commerce determined to use the respondent's information as AFA by applying to the respondent the highest non-aberrational individual dumping margin that was calculated using the average-to-average comparison methodology.³⁸ Further, in *Live Cattle from Canada*, Commerce retained a respondent's BPI documents when it "determined that retention of that data {was} necessary to preserve the integrity of the process and the remedial purpose of the law."³⁹ Furthermore, in *Lawn Groomers*,⁴⁰ Commerce did not permit a party to remove its BPI from the record of the proceeding "in order: (1) to prevent {the respondent} from obtaining a significantly more favorable result by failing to cooperate than if it had cooperated and (2) to prevent manipulation of the final weighted-average dumping margin under which most exports will be subject."

In such situations in which Commerce permits a respondent to withdraw its BPI, Commerce bases the company's weighted-average dumping margin on facts available, using an adverse inference where warranted. It is Commerce's ability to use AFA that ensures that a company will not benefit by a refusal to participate in a proceeding. The AFA practice normally enables Commerce to permit withdrawal of BPI while protecting the integrity of the process. In the present investigation, however, the normal AFA practice cannot serve that function. Based on the information Adisseo submitted in the investigation up to the point at which it chose not to

³⁴ See *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 12 (Second Circuit, 1981).

³⁵ See, e.g., *Live Cattle from Canada*.

³⁶ See, e.g., *Silicomanganese from Brazil*, 59 FR 55432 and 55434 (November 7, 1994); *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6203 and 6204 (January 27, 1993); *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 58 FR 7103 and 7104 (February 4, 1993); *Certain Small Business Telephone Systems and Subassemblies Thereof from Japan*, 54 FR 42541 and 42542 (October 17, 1989); and *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel*, 54 FR 15509 and 15512 (April 28, 1989).

³⁷ See *Common Alloy Aluminum Sheet from Romania: Final Determination of Sales at Less Than Fair Value*, 86 FR 13320 (*CAAS Romania*), and accompanying Issues and Decision Memorandum.

³⁸ *Id.*

³⁹ See *Live Cattle from Canada*, 64 FR 56739 and 56743.

⁴⁰ See *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009) (*Lawn Groomers*), and accompanying Issues and Decision Memorandum at Comment 1.

continue to participate, it is clear Adisseo would benefit from Commerce permitting it to withdraw its BPI. Thus, if Commerce were to permit it to withdraw its BPI, it would permit Adisseo to control the results of the investigation in such a way that Adisseo would avoid a rate based on its own information, and instead benefit from a significantly lower rate based on the petition. Because the company represents a significant proportion of the methionine imports from France, the artificially low rate would substantially deprive the U.S. industry of the full remedy intended under the law. Accordingly, considering the facts and circumstances of this investigation, we find it in the public interest to retain Adisseo's BPI in this investigation. By not permitting a withdrawal of BPI in this investigation, Commerce will preserve the remedial purpose of the law and the fundamental integrity and effectiveness of its investigation.⁴¹

In addition, we find Adisseo's statements about its decision to discontinue shipments of methionine to the United States to be irrelevant to this issue. Commerce's determination "whether the subject merchandise is being, or like to be, sold in the United States at less than its fair value" is based on the pricing behavior of the examined companies during the POI. Assertions from a respondent on its intended future behavior is not germane to this determination.

With respect to the AFA rate Commerce selected, we note that while Adisseo argued that Commerce should allow it to withdraw its BPI and for Commerce to apply the dumping margin alleged in the petition as its estimated weighted-average dumping margin, Adisseo made no alternative argument concerning the rate to be applied as the AFA rate in the event Commerce decided to retain Adisseo's BPI on the record of the investigation.

Finally, with regard to the petitioner's comment that Commerce should maintain its findings from the *Preliminary Determination* in its final determination,⁴² including its finding that critical circumstances exist with regard to imports of subject merchandise from Adisseo, as stated above in "Final Partial Affirmative Determination Of Critical Circumstances," we continue to find that critical circumstances exist, in part, with regards to subject merchandise from France produced and exported by Adisseo, and that critical circumstances do not exist with regard to subject merchandise from France produced or exported by all other producers and exporters.

⁴¹ See *Preliminary Determination* Preliminary Decision Memorandum; see also Memorandum, "Preliminary Determination in the Antidumping Duty Investigation of Methionine from France: AFA Rate for Adisseo France SAS," dated February 24, 2021 at 6. The final results remain unchanged from Commerce's *Preliminary Determination*.

⁴² See Petitioner's Rebuttal Comments at 4.

V. RECOMMENDATION

We recommend approving the above position. If this position is accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.



Agree



Disagree

5/10/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance