



A-469-815
Investigation
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January 26, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Finished Carbon Steel Flanges
from Spain

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that imports of finished carbon steel flanges from Spain are being, or are likely to be, sold in the United States at less-than-fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The preliminary estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On June 30, 2016, the Department received an antidumping duty (AD) petition covering imports of finished carbon steel flanges from Spain, which was filed in proper form by Weldbend Corporation and Boltex Mfg. Co., L.P. (collectively, the petitioners).¹ The Department initiated an AD investigation on imports of finished carbon steel flanges from Spain based on the petition on July 20, 2016.²

In the *Initiation Notice*, the Department notified the public that, in the event the Department determined that the number of companies subject to the investigation were large and it could not examine individually each company based upon the Department’s resources, the Department intended to select respondents based on United States Customs and Border Protection (CBP) data

¹ See Letter from the petitioners to the Secretary of Commerce and the Secretary of the U.S. International Trade Commission entitled, “Petitions for the Imposition of Antidumping Duties on Imports of Finished Carbon Steel Flanges from India, Italy and Spain and Countervailing Duties on Imports from India,” dated June 30, 2016 (the Petition).

² See *Finished Carbon Steel Flanges from India, Italy, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 49619 (July 28, 2016) (*Initiation Notice*).

for United States imports of finished carbon steel flanges during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ On August 10, 2016, the Department released CBP import data to interested parties in the investigation covering finished carbon steel flanges from Spain, and also requested comments regarding respondent selection.⁴ No parties submitted comments on respondent selection, and the Department selected for individual examination ULMA Forja, S.Coop (ULMA), the sole exporter of finished carbon steel flanges from Spain during the POI.⁵

On August 15, 2016, the United States International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of finished carbon steel flanges from India, Italy, and Spain.⁶

On August 30, 2016, the Department issued the AD questionnaire to ULMA.⁷ On September 30, 2016, ULMA informed the Department that it did not intend to respond to the Department's AD questionnaire.⁸

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

III. PERIOD OF INVESTIGATION

The POI is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2016.⁹

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is finished carbon steel flanges from Spain. For a full description of the scope of this investigation, *see* the accompanying preliminary determination *Federal Register* notice of this investigation at Appendix I.

³ *Id.*, at 49623.

⁴ *See* Memorandum from Mark Flessner to the File entitled, "Finished Carbon Steel Flanges from Spain: Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection for the Period of Investigation," dated August 10, 2016.

⁵ *See* Memorandum from Mark Flessner to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Respondent Selection for the Antidumping Duty Investigation of Finished Carbon Steel Flanges from Spain," dated November 18, 2016 (Respondent Selection Memorandum). Based on CBP data, ULMA accounted for 100 percent of exports of finished carbon steel flanges from Spain to the United States, and consequently was the only respondent selected for individual examination.

⁶ *See Investigation Nos. 701-TA-563 and 731-TA-1331-1333 (Preliminary) -- Finished Carbon Steel Flanges from India, Italy, and Spain; Determinations*, 81 FR 55482 (August 19, 2016).

⁷ *See* Letter from Robert James to ULMA, dated August 30, 2016.

⁸ *See* Letter from ULMA to the Secretary of Commerce entitled, "ULMA Piping's Notice of Intent Not to Respond To The Department's Questionnaire -- Finished Carbon Steel Flanges from Spain," dated September 30, 2016 (ULMA Not Responding Letter). ("ULMA Piping" is counsel's abbreviated name for ULMA Forja S.Coop.)

⁹ *See* 19 CFR 351.204(b)(1).

V. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,¹⁰ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).¹¹ We received no comments from interested parties regarding the scope of the investigation as it appeared in the *Initiation Notice*. The scope published in the *Initiation Notice* contained several typographical errors, which have been corrected in Appendix I of the accompanying preliminary determination *Federal Register* notice of this investigation.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, ULMA was selected as the sole mandatory respondent in the investigation of finished carbon steel flanges from Spain. ULMA received the Department's AD questionnaire but stated that it would not submit a questionnaire response.¹² For the reasons stated below, we preliminarily determine that the use of facts otherwise available with an adverse inference is appropriate with respect to ULMA.

A. Application of Facts Available

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

ULMA stated that it would not respond to our questionnaire. As a result, we preliminarily find that necessary information is not available on the record of this investigation, that ULMA withheld information the Department requested, that ULMA failed to provide information by the specified deadlines, and that ULMA significantly impeded the proceeding. Moreover, because ULMA failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are

¹⁰ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

¹¹ See *Initiation Notice*, 81 FR at 49621.

¹² See ULMA Not Responding Letter.

relying upon facts otherwise available to determine ULMA's preliminary estimated weighted-average dumping margin.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹³ In doing so, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁴ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁵ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹⁶ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.¹⁷

We preliminarily find that ULMA has not acted to the best of its ability to comply with the Department's request for information. ULMA informed the Department that it did not intend to respond to the Department's questionnaire. The failure of this company to participate in the investigation and respond to the Department's questionnaire has precluded the Department from performing the necessary analysis to calculate a weighted-average antidumping duty margin for ULMA based on its own data. Accordingly, the Department concludes that ULMA failed to cooperate to the best of its ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.¹⁸

¹³ See also 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹⁴ See section 776(b)(1)(B) of the Act.

¹⁵ See H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁶ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

¹⁷ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

¹⁸ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at pages 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative*

C. Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available

Section 776(b)(2) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.¹⁹ In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²⁰ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the Petition, or (2) the highest calculated rate of any respondent in the investigation.²¹

With respect to Spain, in the Petition,²² the petitioners provided two margins. The estimated Petition margins were 13.19 percent and 24.43 percent, as recalculated by the Department for the purposes of initiation.²³ Thus, consistent with our practice, we have selected the highest dumping margin for merchandise from Spain alleged in the Petition as the AFA rate applicable to ULMA.²⁴

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that in general, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁵ The SAA clarifies that "corroborate"

Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total adverse facts available when the respondent failed to respond to the antidumping questionnaire).

¹⁹ See also 19 CFR 351.308(c).

²⁰ See SAA at 870.

²¹ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum (WSPP from Thailand).

²² See Letter from Weldbend Corporation and Boltex Mfg. Co., L.P. (collectively, petitioners) to the Secretary of the U.S. International Trade Commission and the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from Spain: 2nd Supplemental Questionnaire Response," dated July 13, 2016, at 2 and Exhibit 1. See also AD Investigation Initiation Checklist: Finished Carbon Steel Flanges from Spain, dated July 20, 2016 (the Spain Initiation Checklist) (in which the petition margins were recalculated for purposes of initiation).

²³ See *Initiation Notice*, 81 FR at 49622. See also the Spain Initiation Checklist (in which the petition margins were recalculated for purposes of initiation).

²⁴ See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016), and accompanying Issues and Decision Memorandum at Comment 14 (*PET Resin from India Final Determination*).

²⁵ See SAA at 870.

means that the Department will satisfy itself that the secondary information to be used has probative value.²⁶ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.²⁷ Further, under the Trade Preferences Extension Act of 2015,²⁸ the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁹

Because the AFA rate determined for ULMA is derived from the Petition and, consequently, based upon secondary information, the Department must corroborate the rate to the extent practicable. We determined that the Petition margins are reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.³⁰

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations, and the alleged dumping margins.³¹ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margins alleged in the Petition.³² Because ULMA refused to provide information that the Department requested in its initial questionnaire, the factual information in the Petition and supporting documents are the only information on the record on the issue of dumping.

Our examination of the information is discussed in detail in the Spain Initiation Checklist, where we considered the petitioners’ EP and NV calculations to be reliable after recalculation.³³ We confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and affidavits, as well as publicly available information. We obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP and

²⁶ *Id.*; see also 19 CFR 351.308(d).

²⁷ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

²⁹ See sections 776(d)(3)(A) and (B) of the Act.

³⁰ See the Spain Initiation Checklist.

³¹ *Id.*

³² *Id.*

³³ *Id.*

NV calculations provided in the Petition. Therefore, we preliminarily determine that the dumping margins alleged in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Because there are no other participating cooperative respondents in this investigation, we relied upon the dumping margins alleged in the Petition, which is the only information regarding the finished carbon steel flanges industry on the record.³⁴ In calculating NV, Petitioners relied on constructed value, basing its cost of manufacture on the input factors of production from Boltex (adjusted for known differences between the Spanish and U.S. steel flanges industries during the POI) and valuing factors of production (including labor and electricity) using publicly available data on costs specific to Spain and contemporaneous with the POI.³⁵ Petitioners relied on audited financial statements of a Spanish producer of comparable merchandise to determine fixed overhead, selling, general and administrative expenses, and profit rate.³⁶ In calculating EP, Petitioners relied on the average unit values of entries of steel flanges from Spain under HTSUS subheadings reflecting the importation of finished flanges into the United States. Petitioners deducted foreign inland freight and foreign brokerage and handling expenses derived from the World Bank’s *Doing Business 2015: Spain*, *Doing Business 2016: Spain*, Google Maps, and Import Genius.³⁷ Based on this information, we preliminarily determine that the rates in the Petition are relevant.

Accordingly, the Department preliminarily determines that the highest dumping margin alleged in the Petition (as recalculated by the Department for purposes of initiation) has probative value and has corroborated the AFA rate of 24.43 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant.³⁸

VII. CALCULATION OF ALL-OTHERS RATE

³⁴ See *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with the Department that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that “{t}he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition”).

³⁵ See Volume IV of the Petition, at 6.

³⁶ *Id.*

³⁷ *Id.*, at 2-7.

³⁸ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1; see also the Spain Initiation Checklist (in which the Petition margin was recalculated for purposes of initiation).

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As stated above, ULMA is the sole mandatory respondent in the investigation of finished carbon steel flanges from Spain, and its estimated dumping margin is determined entirely under section 776 of the Act. Thus, consistent with our practice, we have preliminarily calculated the “all-others” rate applicable to entities not individually examined in the investigation of finished carbon steel flanges from Spain as the simple average of the two dumping margins pertaining to finished carbon steel flanges from Spain provided in the Petition (13.19 percent and 24.43 percent), which is 18.81 percent.³⁹

VIII. VERIFICATION

Because the mandatory respondent in this investigation did not provide the information requested by the Department, verification will not be conducted.

³⁹ See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 41978 (July 18, 2014).

IX. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

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Agree

Disagree

1/26/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance