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

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Common Alloy Aluminum Sheet from Spain

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Spain is being, or is 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 estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 9, 2020, Commerce received an antidumping duty (AD) petition concerning imports of aluminum sheet from Spain, filed in proper form by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners), domestic producers of aluminum sheet.¹ On March 30, 2020, Commerce initiated the AD investigation on aluminum sheet from Spain.²

¹ See Petitioners’ Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey - Petition for the Imposition of Antidumping and Countervailing Duties,” dated March 9, 2020 (Petition).

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 19444 (April 7, 2020) (*Initiation Notice*).



In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigations,” in the appendix of the *Initiation Notice*.³ Accordingly, on March 24, 2020, we released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On April 10, 2020, the petitioners submitted comments on respondent selection.⁵

On April 21, 2020, Commerce we limited the number of respondents selected for individual examination to the two exporters and producers that accounted for the largest volume of entries of the subject merchandise into the United States during the period of investigation (POI), Aludium Transformación de Productos S.L. (Aludium) and Compania Valenciana de Aluminio Baux (Baux).⁶ Accordingly, we issued the AD questionnaire to Aludium and Baux.⁷

On April 29, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum sheet from Spain.⁸

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of aluminum sheet to be reported in response to Commerce’s AD questionnaire.⁹ On April 27, 2020, we received timely-filed comments from interested parties. On May 11, 2020, we received timely-filed rebuttal product characteristics comments from interested parties. On May 18, 2020, Commerce officials spoke via telephone with counsel for the petitioners regarding the petitioners’ product characteristics comments and rebuttal comments.¹⁰ On May 19, 2020, Commerce determined the product characteristics applicable to this investigation.¹¹

From May 4, 2020 through May 6, 2020, we received timely-filed comments concerning the scope of the investigation from interested parties. On May 21, 2020, we received timely-filed rebuttal scope comments from interested parties. On May 27, 2020, Commerce officials spoke with counsel for the petitioners via telephone regarding the petitioners’ scope comments and

³ *Id.*, 85 FR at 19448.

⁴ See Memorandum, “Release of U.S. Customs and Border Protection Data,” dated March 24, 2020.

⁵ See Petitioners’ Letter, “Petitioners’ Comments on Customs and Border Protection (“CBP”) Import Data and Respondent Selection,” dated April 13, 2020.

⁶ See the Petition, Volume XVI at 1.

⁷ See Commerce’s Letter, “Initial Questionnaire,” dated April 21, 2020 (Initial Questionnaire).

⁸ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey*, Investigation Nos. 701–TA–639–642 and 731–TA–1475–1492 (Preliminary), 85 FR 23842 (April 29, 2020).

⁹ See *Initiation Notice*, 85 FR at 19445. Commerce subsequently extended the deadlines for comments and rebuttal comments on the scope and product characteristics.

¹⁰ See Memorandum, “Phone Call with Outside Counsel,” dated May 19, 2020.

¹¹ See Commerce’s Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Product Characteristics,” dated May 19, 2020.

rebuttal comments.¹² We issued the Preliminary Scope Decision Memorandum concurrently with this memorandum accompanying *Federal Register* notice.¹³

On June 4, 2020, Commerce issued revised descriptions for certain product characteristics.¹⁴ On June 11, 2020, the petitioners submitted comments in response to requests from Aludium, and respondents in other aluminum sheet investigations to rescind the revisions made in Commerce's Revised Product Characteristics Memorandum.¹⁵ On June 12, 2020, Commerce officials spoke via telephone with counsel for the petitioners, counsel for Aludium and Baux, and counsel for respondents in other aluminum sheet investigations regarding Commerce's Revised Product Characteristics Memorandum.¹⁶ On June 16, 2020, we issued the final product characteristics in this investigation.¹⁷

On July 29, 2020, Commerce postponed the preliminary determination of this investigation by 50 days, to October 6, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).¹⁸

Aludium, Baux, and Jupiter Aluminum Corp. (Jupiter) (Baux's U.S. affiliated importer)¹⁹ submitted timely responses to section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information, in May 2020.²⁰ In June 2020, Aludium, Baux, and Jupiter responded to sections B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections relating to

¹² See Memorandum, "Common Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Deadline for Scope Comments: Ex Parte Telephone Call with Counsel for the Aluminum Association Trade Enforcement Working Group," dated May 29, 2020.

¹³ See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this memorandum (Preliminary Scope Decision Memorandum).

¹⁴ See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Product Characteristics Correction," dated June 4, 2020 (Revised Product Characteristics Memorandum).

¹⁵ See Petitioner's Letter, "Antidumping Investigations Concerning Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey - Petitioners' Response to Respondents' Requests to Rescind Product Characteristics Clarification and for Extensions of Time to Submit Section B – D Questionnaire Responses," dated June 11, 2020.

¹⁶ See Memorandum, "Meeting with Outside Counsel," dated June 16, 2020.

¹⁷ See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Revised Product Characteristics Guidance," dated June 16, 2020 (Final Product Characteristics Memo).

¹⁸ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576 (July 29, 2020); see also Petitioners' Letter, "Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Petitioners' Request for Postponement of Preliminary Antidumping Determinations," dated July 16, 2020.

¹⁹ Baux and Jupiter report that certain information regarding Jupiter's operations is business proprietary and cannot be shared with Baux officials. Therefore, it was necessary for Jupiter to submit separate questionnaire responses.

²⁰ See Aludium's May 22, 2020 section A questionnaire response; Baux's May 19, 2020, section A questionnaire response; and Jupiter's May 19, 2020 section A questionnaire response.

home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.²¹

From June through September 2020, we sent supplemental questionnaires to Aludium, Baux, and Jupiter. We received timely supplemental questionnaire responses from Aludium from June through September 2020.²² We also received Baux's and Jupiter's responses to the section A supplemental questionnaires on June 29, 2020.²³ The petitioners submitted comments on Aludium's, Baux's, and Jupiter's questionnaire responses from June to September 2020.

On July 1, 2020, Baux requested to be deselected as a mandatory respondent, and asked that, while Commerce considers its request, Commerce suspend all of Baux's supplemental questionnaire response deadlines.²⁴ On July 2, 2020, Commerce denied Baux's request to suspend any pending deadlines.²⁵ On July 6, 2020, Baux reiterated its requests and stated that it would no longer respond to Commerce's outstanding questionnaires.²⁶ On July 16, 2020, Commerce denied Baux's deselection request.²⁷ Thereafter, Baux again requested that Commerce deselect it as a mandatory respondent,²⁸ and we reiterated our original decision to not deselect Baux.²⁹

On September 9, 2020, Baux submitted comments for consideration in the preliminary determination. On September 18, 21, and 29, 2020, the petitioners submitted comments with respect to Aludium for consideration in the preliminary determination.³⁰

²¹ See Aludium's June 18, 2020, section B questionnaire response (Aludium June 18 BQR); June 19, 2020 section C questionnaire response (Aludium June 18 CQR); and June 19 section D questionnaire response; *see also* Baux's June 18, 2020 sections B, C, and D questionnaire response; and Jupiter's June 18, 2020 sections B, C, and D questionnaires response.

²² See Aludium's July 6, 2020 supplemental section A questionnaire response (Aludium July 6 SAQR); July 22, 2020 supplemental section B questionnaire response; July 30, 2020 supplemental section B questionnaire response; August 10, 2020 supplemental section D questionnaire response; August 21, 2020 supplemental section C questionnaire response (Aludium August 21 SCQR); August 26, 2020 supplemental section C questionnaire response; September 4, 2020 supplemental section D questionnaire response; September 21, 2020 supplemental sections B and C questionnaire response (Aludium September 21 SBCQR); and September 23, 2020 supplemental section C questionnaire response (Aludium September 23 SCQR).

²³ See Jupiter's June 29, 2020 supplemental section A questionnaire response; *see also* Baux's June 29, 2020 supplemental section A questionnaire response.

²⁴ See Baux's Letter, "Request to Extend/Suspend Deadlines and to be Deselected as Mandatory Respondent," dated July 1, 2020 (Baux's July 1 Letter).

²⁵ See Commerce's Letter, "Extension for all Questionnaire Responses," dated July 2, 2020.

²⁶ See Baux's Letter, "Request for Reconsideration to Extend/Suspend Deadlines and to be Deselected as Mandatory Respondent," dated July 6, 2020 (Baux's July 6 Letter).

²⁷ See Commerce's Letter, "Request to be Deselected as a Mandatory Respondent," dated July 16, 2020.

²⁸ See Baux's Letter, "Response to Denial of Request to be Deselected as Mandatory Respondent," dated July 17, 2020 (Baux's July 17 Letter).

²⁹ See Commerce's Letter, "Additional Request to be Deselected as a Mandatory Respondent," dated July 28, 2020 (Commerce's July 28 Response).

³⁰ See Petitioners' Letters, "Petitioners' Pre-Preliminary Determination Comments Regarding Cost Issues for Aludium Transformación de Productos, S.L.," dated September 18, 2020, "Petitioners' Comments on Sales Issues for Aludium Tranformation de Productos, S.L.," dated September 21, 2020, and "Petitioners' Supplemental Pre-Preliminary Determination Comments," dated September 29, 2020.

III. PERIOD OF INVESTIGATION

The POI is January 1, 2019 through December 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2020.³¹

IV. SCOPE OF INVESTIGATION

The products covered by this investigation are common alloy aluminum sheet from South Africa. For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³² in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).³³ As noted above, certain interested parties commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttals and our accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

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 if an interested party: (1) withholds information requested by Commerce; (2) 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; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce 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 Commerce shall consider the ability of an interested party to provide information in the form and manner requested upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person

³¹ See 19 CFR 351.204(b)(1).

³² See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³³ See *Initiation Notice*, 85 FR at 19444.

submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states further that Commerce 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.

Aludium

As discussed in the “Constructed Export Price” section below, because Commerce reclassified certain of Aludium’s sales as constructed export price (CEP) sales, the record does not contain the associated U.S. imputed inventory carrying costs associated with these sales. Therefore, Commerce is using facts available in accordance with section 776(a)(1) of the Act to determine this expense. For more information on the application of facts available to Aludium’s CEP sales, *see* Aludium’s Preliminary Analysis Memo.³⁴

B. Use of Adverse Inference

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.³⁵ In doing so, Commerce 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.³⁶ Further, section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review accompanying the Uruguay Round Agreements Act, or other information placed on the record.³⁷ In addition, the Statement of Administrative Action (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.”³⁸ Affirmative evidence of bad faith on the part of a respondent is not required

³⁴ See Memorandum, “Preliminary Analysis Memorandum for Aludium Transformación de Productos, S.L.,” dated concurrently with this memorandum (Aludium’s Preliminary Analysis Memo).

³⁵ See 19 CFR 351.308(a).

³⁶ See section 776(b)(1)(B) of the Act.

³⁷ See 19 CFR 351.308(c).

³⁸ See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; *see also* *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

before Commerce may make an adverse inference in selecting from the facts available.³⁹ It is Commerce's practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.⁴⁰

Aludium

In the Initial Questionnaire, Commerce requested that Aludium report as its date of shipment the date that it shipped the merchandise from the last facility under its control, *e.g.*, the factory or distribution warehouse to the customer.⁴¹ In Aludium June 18 BQR and Aludium June 18 CQR, Aludium stated that "Aludium issues the commercial invoice at the time of shipment. Accordingly, the shipment date is equal to the invoice date for all sales."⁴² In a supplemental section C questionnaire, Commerce requested that Aludium "ensure that SHPDATH/U {sic} reports the actual date the subject merchandise departed Aludium's factory."⁴³ In response, Aludium stated that reporting the actual date the merchandise departed Aludium's factory would have been too burdensome, and "the invoice date accurately reflects the date on which the subject merchandise departed Aludium's factories."⁴⁴

We note that, while Aludium claimed that reporting the date of shipment was too burdensome to comply in its questionnaire response, Aludium did not notify Commerce of any difficulties in responding to these questions (regarding the date of shipment) pursuant to section 782(c)(1) of the Act.⁴⁵ Rather, Commerce requested that Aludium report specific information, and Aludium refused to do so. Aludium's decision to omit this information from its responses resulted in Commerce's inability to determine the correct date of sale for Aludium's U.S. sales, potentially impacting both the universe of U.S. sales reported and the exchange rates used to perform all currency conversions. Therefore, the use of facts available is warranted, in accordance with sections 776(a)(1) and 776(a)(2)(B)-(C) of the Act.

³⁹ 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); and *Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*), 62 FR at 27340.

⁴⁰ See SAA at 870; see also *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 (IDM) at 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, 14477 (March 14, 2014).

⁴¹ See Initial Questionnaire at B-11 and C-9.

⁴² See Aludium June 18 BQR at B-26 and Aludium June 18 CQR at C-24.

⁴³ See Commerce's Letter, "Section C Supplemental Questionnaire," dated July 30, 2020 (Section C Supplemental) at 3.

⁴⁴ See Aludium August 21 SCQR at 11.

⁴⁵ The Court has found in *RZBC Group Shareholding Co., Ltd. v. United States*, 39 CIT, 100 F. Supp. 3d 1288, 1298 (2015) that "[i]f a party explains why it cannot give the information in the form requested, if it suggests alternative ways to package the data, and if it notifies the agency of its plight within fourteen days of receiving the questionnaire, then Commerce must 'consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.'...The idea is to help respondents who face technical barriers to filing their answers. The provision does not excuse parties from submitting data altogether."

Aludium failed to provide its actual date of shipment, despite being requested to do so by Commerce twice.⁴⁶ Aludium's statement that it was "extremely burdensome" to provide the exact shipment date did not exempt Aludium from reporting this information. In fact, Aludium was familiar with Commerce's procedures regarding exemptions and modifications to the required reporting – it submitted three notifications of difficulty throughout this proceeding, to which Commerce responded and accommodated; none of the notifications addressed date of shipment.⁴⁷ Therefore, for the reasons stated above, and in accordance with sections 776(a) and (b) of the Act, we preliminarily determine that the use of partial facts otherwise available with an adverse inference is appropriate with respect to Aludium's date of shipment, and, by extension, its date of sale.

Baux

On April 21, 2020, we issued the initial questionnaire to Baux and received timely responses to sections A, B, C, and D.⁴⁸ On June 16, 2020, Commerce requested that Baux submit section E of the initial questionnaire.⁴⁹ On June 19, 2020, Commerce notified Baux that it failed to provide all requested information with its sections B, C, and D questionnaire responses and provided a new deadline to provide the missing information.⁵⁰

On July 1, and 6, 2020, Baux requested that it be deselected as a mandatory respondent in this investigation.⁵¹ Also in Baux's July 6 Letter, Baux stated that it would not provide responses to the outstanding questionnaires.⁵² On July 16, 2020, Commerce denied Baux's deselection request.⁵³ Baux again requested that Commerce deselect it as a mandatory respondent,⁵⁴ and Commerce reiterated our original decision to not deselect Baux as a mandatory respondent.⁵⁵

As noted above, Baux failed to respond to section E of the initial questionnaire, failed to provide all information requested in a supplemental questionnaire, and notified Commerce that it would no longer respond to outstanding questionnaires in this proceeding. Thus, Baux failed to provide the requested information necessary for Commerce to calculate a dumping margin for it in this investigation. Therefore, the use of facts available is warranted, in accordance with sections 776(a)(1) and 776(a)(2)(B)-(C) of the Act. For the reasons stated above, and in accordance with sections 776(a) and (b) of the Act, we preliminarily determine that the use of total facts otherwise available with an adverse inference is appropriate with respect to Baux.

⁴⁶ See Initial Questionnaire at B-11 and C-9, and Section C Supplemental at 3.

⁴⁷ See Aludium's Letters, "Aludium Transformación de Productos, S.L.'s Notification of Potential Difficulties in Responding to the Initial Questionnaire," dated May 8, 2020, "Aludium Transformación de Productos, S.L.'s Notification of Difficulties and Request for Clarification for Certain Questions in the Supplemental C Questionnaire," dated August 12, 2020, and "Aludium Transformación de Productos, S.L.'s Notification of Difficulties and Request for Modification for a Certain Question in the Second Supplemental Sections B and C Questionnaire," dated September 11, 2020.

⁴⁸ See Initial Questionnaire.

⁴⁹ See Commerce's Letter, "Section A Supplemental Questionnaire," dated June 16, 2020 at 11.

⁵⁰ See Commerce's Letter, "Sections B-D Questionnaire Response," dated June 19, 2020.

⁵¹ See Baux's July 1 Letter and Baux's July 6 Letter.

⁵² See Baux's July 6 Letter.

⁵³ See Commerce's Letter, "Request to be Deselected as a Mandatory Respondent," July 16, 2020.

⁵⁴ See Baux's July 17 Letter.

⁵⁵ See Commerce's July 28 Response.

C. Preliminary Estimated Weighted-Average Dumping Margins Based on AFA

Section 776(b)(2) of the Act states that Commerce, when employing AFA, 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.⁵⁶ In selecting a rate based on AFA, Commerce 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.⁵⁷ Commerce'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.⁵⁸

Aludium

Commerce is applying partial AFA for Aludium's U.S. date of shipment because it is missing from the record and needed for our analysis. Further, as described above, Aludium did not cooperate to the best of its ability to provide the missing information. Commerce's practice is to use the earlier of invoice date or shipment date as the date of sale. The date of sale determines the universe of reportable sales, and it also determines the appropriate exchange rate used in all currency conversions. Commerce reviewed all of Aludium's U.S. sales documents on the record and determined that the date of packing lists are the most appropriate dates to use as the date of shipment because they include "load numbers" which appear to identify either a license plate or shipping container/identifier as provided by the freight provider. Therefore, as partial AFA for the preliminary determination, we calculated Aludium's date of shipment by determining the longest difference between invoice date and packing list for a U.S. sale on the record and deducted those days from the reported invoice date. This resulted in shipment date always preceding invoice date, and, therefore, shipment date was used as the date of sale. This removed certain sales during the first part of the POI, and it resulted in more accurate currency conversions. Because we have revised the shipment dates, we re-calculated credit expenses, as well.

Finally, as partial AFA, because our calculation of shipment date also resulted in a period of time for which Aludium did not report sales,⁵⁹ we included these unreported sales in our analysis using an adverse inference. In order to determine the quantity of such sales, we calculated the average daily sales quantity from Aludium's U.S. sales database and multiplied this daily average by the number of days we calculated above. We then applied Aludium's highest non-aberrational transaction-specific margin for prime merchandise to this quantity to derive the

⁵⁶ See 19 CFR 351.308(c).

⁵⁷ See SAA at 870.

⁵⁸ See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

⁵⁹ Aludium reported all sales with an invoice date within the POI. However, as partial AFA, we are finding certain sales with an invoice date after the POI had a date of shipment during the POI, and, therefore, should have been reported in Aludium's U.S. sales database.

margin for these sales. This methodology is consistent with Commerce's practice.⁶⁰ For a more detailed explanation of this partial AFA decision, *see* Aludium's Preliminary Analysis Memo.

Baux

With respect to this investigation, the only dumping margin alleged in the Petition concerning aluminum sheet from Spain is 24.26 percent.⁶¹ Thus, consistent with our practice, we first considered the only dumping margin alleged in the Petition concerning aluminum sheet from Spain in determining the AFA rate applicable to Baux for this preliminary determination. However, as further explained below, we are unable to corroborate this margin. Therefore, we are assigning Baux the highest transaction-specific dumping margin calculated for Aludium's sales of prime merchandise (*i.e.*, 23.32 percent) as AFA.

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce 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.⁶² 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."⁶³ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.⁶⁴ The SAA and Commerce's regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information derived from interested parties during the particular investigation.⁶⁵ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce 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.⁶⁶ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual transaction-specific margins; Commerce may use the component approach to corroboration.⁶⁷

⁶⁰ *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstance, in Part*, 84 FR 16378 (April 4, 2017) and accompanying IDM at Comment 4.

⁶¹ *See* Petitioners' Letter, "Petitioners Supplement to Volume XVII Relating to Spain Antidumping Duties," dated March 17, 2019 at Exhibit AD-ES-S-3.

⁶² *See* 19 CFR 351.308(d).

⁶³ *See* SAA at 870.

⁶⁴ *See* SAA at 870; *see also* 19 CFR 351.308(d).

⁶⁵ *Id.*

⁶⁶ *See* section 776(d)(3) of the Act.

⁶⁷ *See, e.g., Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

In order to determine the probative value of the dumping margin of 24.26 percent alleged in the Petition concerning aluminum sheet from Spain, we examined the information on the record. When we compared the dumping margin of 24.26 percent alleged in the Petition concerning aluminum sheet from Spain to the transaction-specific dumping margins we preliminarily determined for Aludium in this investigation, we found the rate of 24.26 percent to be higher than Aludium's highest calculated transaction-specific dumping margin (*i.e.*, 23.32 percent) for prime merchandise. Because we were unable to corroborate the rate of 24.26 percent in the Petition concerning aluminum sheet from Spain with transaction-specific margins from Aludium, we next applied a component approach and compared the normal value (NV) and net U.S. price underlying this rate to the range of NVs and net U.S. prices that we preliminarily calculated for Aludium in this investigation. Again, we found that we were not able to corroborate the margin of 24.26 percent alleged in the Petition concerning aluminum sheet from Spain using this component approach. Specifically, we find that the NV and net U.S. price underlying the margin of 24.26 percent alleged in the Petition concerning aluminum sheet from Spain are not within the range of NVs and net U.S. prices calculated for Aludium.

Accordingly, with respect to Baux, we have used, as AFA, the highest transaction-specific margin for prime merchandise of 23.32 percent that we preliminarily determined for Aludium.⁶⁸ Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, Commerce need not corroborate this rate, pursuant to section 776(c) of the Act.

VII. AFFILIATION/SINGLE ENTITY

During the POI, Baux sold aluminum sheet in both the home market and to the United States through a reseller located in Spain, Bancolor Baux S.L.U. (Bancolor). As set forth below, we preliminarily determine that Baux and Bancolor are affiliated, pursuant to section 771(33)(F) of the Act. Furthermore, based on the evidence provided in Baux's questionnaire responses and pursuant to 19 CFR 351.401(f), we preliminarily determine that both Baux and Bancolor export subject merchandise to the United States, and based on additional factors, should be treated as a single entity in this investigation. Due to the business proprietary nature of information relating to this analysis, a more detailed discussion of this matter can be found in the Baux Affiliation and Collapsing Memorandum.⁶⁹

Section 771(33)(F) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons" as: two or more persons directly or indirectly controlling, controlled by, or under common control with, any person. Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The SAA notes that control may be found to exist within corporate groupings.⁷⁰ Commerce's regulations at 19 CFR 351.102(b)(3) state that, in determining whether control over another person exists

⁶⁸ See Aludium's Preliminary Analysis Memo.

⁶⁹ See Memorandum, "Preliminary Affiliation and Collapsing Memorandum for Compania Valenciana de Aluminio Baux S.L.U.," dated concurrently with this memorandum (Baux Affiliation and Collapsing Memorandum).

⁷⁰ See SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.⁷¹

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity, and to determine a single weighted-average dumping margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.⁷² While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed, and has used the criteria outlined in the regulation in its analysis. While 19 CFR 351.401(f) uses the term “producers,” Commerce’s practice is to apply this regulation to resellers and other affiliated companies as well.⁷³

When determining whether to collapse an exporter with an affiliated producer, Commerce’s practice is to look solely to 19 CFR 351.402(f)(2), along with other criteria Commerce finds indicate a significant potential for manipulation. In identifying a significant potential for manipulation, Commerce may consider factors including “{t}he level of common ownership;”⁷⁴ “{t}he extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm;”⁷⁵ and “{w}hether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.”⁷⁶ Commerce considers these criteria in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the affiliated entities.⁷⁷

As provided in more detail in the Baux Affiliation and Collapsing Memorandum, we preliminarily determine that Baux and Bancolor are affiliated pursuant to section 771(33)(F) of the Act, and we preliminarily find that the two companies should be treated as a single entity pursuant to 19 CFR 351.401(f) and consistent with our practice.⁷⁸ The information on the record indicates that there is significant potential for the manipulation of price or production between Baux and Bancolor, as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of their operations.⁷⁹ Thus, we have preliminarily determined to treat Baux and Bancolor as a single entity (collectively referred to as “Baux”) in accordance with 19 CFR 351.401(f).

⁷¹ See *Preamble*, 62 FR at 27297-98.

⁷² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying IDM at Comment 5.

⁷³ See, e.g., *Certain Fresh Cut Flowers from Columbia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996).

⁷⁴ See 19 CFR 351.401(f)(2)(i).

⁷⁵ See 19 CFR 351.401(f)(2)(ii).

⁷⁶ See 19 CFR 351.401(f)(2)(iii).

⁷⁷ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying IDM at Comment 10).

⁷⁸ See Baux Affiliation and Collapsing Memorandum for further discussion.

⁷⁹ *Id.*

VIII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

To determine whether sales of aluminum sheet from Spain to the United States were made at LTFV, we compared the export prices (EPs) and/or CEPs to the NV, as described in the “U.S. Price” and “Normal Value” sections of this memorandum, below.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs, *i.e.*, the average-to-average method, unless Commerce determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁸⁰ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

⁸⁰ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁸¹

2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce finds that 80.18 percent of Aludium's export sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices for comparable merchandise that differ significantly amount purchasers, regions or time periods. Further, Commerce determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative comparison method based on the average-to-transaction method applied to all U.S. sales. Accordingly, Commerce has determined to use the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Aludium.⁸²

B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for model matching purposes, within a certain deadline.⁸³ We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the product control numbers of aluminum sheet in this AD investigation. Commerce identified nine criteria for the physical characteristics of the subject merchandise: (1) alloy, (2) clad *versus* non-clad, (3) casting method, (4) non-mechanical surface treatment, (5) coil, (6) nominal width, (7) gauge (nominal thickness), (8) mechanical surface finish, and (9) temper.⁸⁴ We instructed Aludium to use these product characteristics in its response to the initial questionnaire issued in this investigation.⁸⁵

In accordance with section 771(16) of the Act, we considered all products produced and sold by Aludium in Spain during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, as appropriate.

⁸¹ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁸² In making this finding, we also considered the unreported sales, which when included, results in an overall margin above the *de minimis* threshold.

⁸³ See *Initiation Notice*, 85 FR at 19445.

⁸⁴ See Final Product Characteristics Memo.

⁸⁵ *Id.*

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.

Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁸⁶ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁸⁷

Aludium reported the invoice date as the date of sale for both its home market and U.S. sales. As discussed above, Aludium failed to report a shipment date, despite our request that it do so, and, as a result, Commerce has determined this date for sales to the United States using AFA, and we have used the date of invoice as the date of shipment for sales in the home market. Consistent with 19 CFR 351.401(i) and Commerce's practice, for U.S. sales, we used the earlier of Aludium's calculated shipment date or invoice date as the date of sale. For further discussion, *see* section V.B. above.

D. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under subsection 772(c) of the Act. In accordance with section 772(a) of the Act, we calculated EP for all Aludium's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. In accordance with 19 CFR 351.401(c), we made adjustments to the starting prices for billing adjustments and rebates, where appropriate. We made deductions, where appropriate, for movement expenses, *i.e.*, international freight, marine insurance, U.S. duties, and other U.S. transportation expenses (*i.e.*, U.S. brokerage and handling, U.S. customs processing fees, and U.S. harbor maintenance fees), in accordance with section 772(c)(2)(A) of the Act.

E. Constructed Export Price

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the

⁸⁶ See 19 CFR 351.401(i); *see also* *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁸⁷ See, *e.g.*, *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under subsections (c) and (d) of the Act. In accordance with section 772(b) of the Act, we calculated CEP for all of Aludium’s U.S. sales where the subject merchandise was sold after importation.

Aludium reported that all of its sales were EP sales.⁸⁸ However, Aludium reported that certain U.S. customers returned merchandise, which Aludium resold to other U.S. customers after importation into the United States. Accordingly, we have reclassified these sales as CEP sales.⁸⁹

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. In accordance with 19 CFR 351.401(c), we made adjustments to the starting prices for billing adjustments, where appropriate. We made deductions, where appropriate, for movement expenses, *i.e.*, international freight, marine insurance, U.S. duties, and other U.S. transportation expenses (*i.e.*, U.S. brokerage and handling, U.S. customs processing fees, and U.S. harbor maintenance fees) in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit and commissions) and indirect selling expenses (inventory carrying costs).

Finally, we made an adjustment for profit allocated to CEP selling expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred Aludium on its sales of the subject merchandise in the United States and the profit associated with those sales.

F. Duty Drawback

Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. prices.⁹⁰ The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation). The second prong of the test is that the company must demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.⁹¹

⁸⁸ See Aludium June 18 CQR at C-20.

⁸⁹ See “Export Price/Constructed Export Price” section *infra* for definitions of EP and CEP sales as per the Act.

⁹⁰ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

⁹¹ *Id.*; see also *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2.

In this investigation, Aludium provided timely responses and supporting documentation regarding its duty drawback claim, *i.e.*, the European Union’s regulations for the Spanish Inward Processing Customs Relief program (RPA),⁹² its RPA licenses,⁹³ and the samples of associated “Estado Liquidatorios” or Liquidation Status documents.⁹⁴ However, after analyzing Aludium’s response, we find that the documentation provided did not demonstrate that there were sufficient imports of materials to account for the duty drawback granted for the export of the manufactured product. Specifically, there is conflicting evidence on the record with regard to Aludium’s yield loss rates for the production of subject merchandise, which calls into question whether the volume of imports is sufficient to account for the duty drawback granted on exports.⁹⁵

Commerce requested that Aludium provide evidence supporting its duty drawback claim in a supplemental questionnaire. However, in response, Aludium merely cited to Spanish customs’ approval of its duty drawback claims,⁹⁶ and it did not provide the requested documentation related to its production process which was necessary for Commerce to conduct its analysis of import sufficiency related to the second prong of our analysis.⁹⁷ Accordingly, we preliminarily determine that Aludium’s duty drawback claim did not meet the second prong laid out in *Saha Thai*, and we preliminarily determine to disallow Aludium’s duty drawback claim.

G. Normal Value

1. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product for Aludium was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that Aludium’s home market of Spain is viable. Therefore, we used home market sales in Spain as the basis for NV for Aludium, in accordance with section 773(a)(1)(A) and (B) of the Act.

⁹² See Aludium June 18 CQR at Exhibit C-13B and C-13D.

⁹³ *Id.* at Exhibit C-13C.

⁹⁴ See, *e.g.*, Aludium June 18 CQR at Exhibit C-13D.

⁹⁵ See Aludium’s Preliminary Analysis Memo; compare Aludium June 18, 2020 DQR at Exhibit D-8 with Aludium September 23 SCQR at Exhibit 3SC-09.

⁹⁶ See Aludium September 23 SCQR at 7.

⁹⁷ *Id.*

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁹⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁹⁹ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,¹⁰⁰ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹⁰¹

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁰²

In this investigation, we obtained information from Aludium regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.¹⁰³ Our LOT findings are summarized below.

In the home market, Aludium reported that it made sales through one channel of distribution. Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales-related administrative activities. Based on

⁹⁸ See 19 CFR 351.412(c)(2).

⁹⁹ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

¹⁰⁰ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

¹⁰¹ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

¹⁰² See, e.g., *OJ from Brazil* IDM at Comment 7.

¹⁰³ See Aludium July 6 SAQR at Exhibit SA-6.

Aludium's selling functions chart, we find that Aludium performed sales support, technical support, logistical services, and sales-related administrative activities for all home market sales. Therefore, we preliminarily determine that Aludium's sales to the home market during the POI were made at one LOT.

With respect to the U.S. market, Aludium reported that it made all U.S. sales through the same channel of distribution as discussed above for the home market.¹⁰⁴ For its U.S. sales channel, Aludium reported that it performed sales support, technical support, logistical services, and sales-related administrative activities.¹⁰⁵ Therefore, we preliminarily determine that Aludium's sales to the U.S. market were made at one LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Aludium performed for its U.S. and home market customers are nearly identical.¹⁰⁶ Specifically, Aludium performed four of the five same selling functions in the home market as it performed in the U.S. market. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

3. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV and COP information from Aludium. We examined the cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we are applying our standard methodology of using annual costs based on Aludium's reported data.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses. We relied on the COP data submitted by Aludium with certain adjustments.

For the preliminary determination, we made the following adjustments to Aludium's COP data: (1) we disallowed Aludium's requested startup adjustment; (2) we adjusted Aludium's G&A expense ratio to account for expenses charged to Aludium that were not at arm's length; and (3) we calculated the average conversion costs for products with similar product characteristics (smoothing) to mitigate unreasonable conversion cost differences. *See* Aludium's Preliminary Cost Memo for a more detailed discussion of these adjustments.¹⁰⁷

¹⁰⁴ *Id.* As noted above, Aludium reported all U.S. sales as EP transactions during the POI, and it did not report any additional selling functions for its transactions reclassified as CEP sales. *See* Aludium September 21 SBCQR at Exhibit 2SBC-25.

¹⁰⁵ *See* Aludium July 6 SAQR at Exhibit SA-6.

¹⁰⁶ *Id.*

¹⁰⁷ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Aludium Transformación de Productos, S.L.," dated concurrently with this memorandum (Aludium's Preliminary Cost Memo).

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of certain billing adjustments,¹⁰⁸ discounts, and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Aludium's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

H. Calculation of NV Based on Comparison-Market Prices

We calculated NV for Aludium based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for certain billing adjustments, early payment discounts, and rebates, where appropriate. Although Aludium reported a billing adjustment described as "extra costs at the customer level" (BILLADJ5H), we made no adjustment to the starting price for this item because Aludium did not provide documentation to support this adjustment as requested. We also made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland freight.

For comparisons to EP sales, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses

¹⁰⁸ See Aludium's Preliminary Analysis Memo for a discussion of the billing adjustments used in Commerce's analysis.

(i.e., imputed credit expenses and commissions) and adding U.S. direct selling expenses (i.e., imputed credit expenses and commissions). We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market, also known as the “commission offset.” Specifically, commissions were incurred only in the United States, and so we limited the amount of such allowance to the amount of the indirect selling expenses incurred in the home market. We recalculated home market credit expenses and indirect selling expenses to remove the disallowed billing adjustments noted above from the calculations.¹⁰⁹

For comparisons to CEP sales, we made deductions for home market imputed credit expenses, warranties, and bank charges, pursuant to 773(a)(6)(C) of the Act. We also made a commission offset as described above.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹¹⁰ We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

I. Calculation of NV Based on CV

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Aludium’s material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the “Calculation of Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Aludium in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for direct selling expenses incurred on Aludium’s home market sales, in accordance with section 773(a)(7)(ii)(B) of the Act. We also made a commission offset as described above.

IX. CURRENCY CONVERSION

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

¹⁰⁹ See Aludium’s Preliminary Analysis Memo.

¹¹⁰ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

X. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

10/6/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance