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Administrative Review
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November 30, 2012

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Christian Marsh *CBM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the
Administrative Review of Stainless Steel Plate in Coils from
Belgium

Summary

We have analyzed the case and rebuttal briefs submitted by the respondent, Aperam Stainless Belgium N.V. (AS Belgium), and by the petitioners.¹ As a result of our analysis, we have made changes from the Preliminary Results in the margin calculations.² We recommend that you approve the positions described in the Discussion of Interested Party Comments section, infra.

I. Background

On June 1, 2012, the Department of Commerce (the Department) published the Preliminary Results in the Federal Register. This review covers one manufacturer/exporter of the subject merchandise: AS Belgium. Based on our analysis of the comments received, we have made certain changes to the margin calculations for AS Belgium. For a discussion of these changes, see Memorandum to the File from Jolanta Lawska, Case Analyst entitled "Calculation Memorandum for Aperam Stainless Belgium N.V. (AS Belgium) for the Final Results of the 10th Administrative Review of Stainless Steel Plate in Coils from Belgium," dated November 30, 2012 (Final Sales Calculation Memo).

¹The petitioners in this case are: Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, and the United Steelworkers of America, AFL-CIO/CLC (collectively, Petitioners). AS Belgium and Petitioners submitted their case briefs on September 17, 2012. AS Belgium and Petitioners submitted their rebuttal briefs on September 24, 2012. AS Belgium submitted additional comments regarding targeted dumping on October 30, 2012. Petitioners submitted additional comments regarding targeted dumping on November 5, 2012.

² See Stainless Steel Plate in Coils From Belgium: Notice of Preliminary Results of Antidumping Duty Administrative Review, 77 FR 32517 (June 1, 2012) (Preliminary Results).



II. List of Comments

Comment 1: Bundled Pricing

Comment 2: Targeted Dumping

Comment 3: Constructed Value (CV) Profit and Selling Expense Ratios

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III. Discussion of Interested Party Comments

Comment 1: Bundled Pricing

Petitioners in their pre-preliminary letters dated April 3, 6, 18, and 24, 2012, submitted an allegation of bundled sales with respect to AS Belgium. Petitioners allege that AS Belgium's customer structure and sales patterns in both the home market and the U.S. market provide evidence that the sales of subject merchandise were priced in bundles with non-subject merchandise during the period of review (POR). Petitioners renewed their claim about price bundling in their case brief dated September 17, 2012, but only in reference to the U.S. market. According to Petitioners, the practice of price bundling across products is a method used to mask dumping and circumvent antidumping duties. Therefore, Petitioners urge the Department to investigate further whether AS Belgium was engaged in bundled pricing practices during the POR.

In support of their argument, Petitioners cite to the New Zealand investigation of Plasterboard from Thailand,³ where, according to Petitioners, the Government of New Zealand found that Thai Gypsum Products PIC (BPB) bundled the prices of the two different types of plasterboards by exporting subject standard plasterboards products above the price to avoid any antidumping duty and at the same time decreasing non-subject performance plasterboards export prices below market prices.

With respect to the home market, Petitioners allege that AS Belgium's customer structure and aberrant pricing patterns in the home market indicate bundled pricing. According to Petitioners, it is highly likely that "prices to many of the same customers in Belgium for products in the same general category of goods compensated for the pricing of the foreign like product."⁴

In reference to the U.S. market, Petitioners claim that AS Belgium's particular identities of U.S. customers created "circumstances" conducive to bundled prices and are responsible for aberrant sales transactions during the POR. In particular, Petitioners argue that certain AS Belgium's U.S. customers are affiliated with certain agencies of foreign exporters of stainless steel products

³ 2006 Reassessment of Anti-dumping Duties on Plasterboard from the Kingdom of Thailand; Ministry of Economic Development of New Zealand, September 2006. (Plasterboard from Thailand) at 23.

⁴ See Petitioners' April 3, 2012 submission at 6.

and certain distributors dealing with a wide range of products, both subject and non-subject merchandise.⁵ Further, Petitioners assert that AS Belgium's corporate activities during the POR indicate bundled pricing.

Petitioners note that reluctance on the part of the respondent to supply information on its home-market sales of non-subject merchandise point toward bundled pricing.⁶ Petitioners request that the Department issue supplemental questionnaires and conduct verification of the responses submitted by AS Belgium in this administrative review. Petitioners state that "only an examination of AS Belgium's customers' histories, contracts, communications, and sales patterns for non-subject as well as subject merchandise would confirm whether AS Belgium's U.S. and home market sales were subject to bundling during the POR."⁷ According to Petitioners, a full verification is warranted for good cause under 19 CFR 351.307(b)(1)(iv).

In letters dated April 13, 20, and 27, 2012, and rebuttal brief dated September 24, 2012, AS Belgium objects to Petitioners' allegations and argues that Petitioners failed to submit evidence in support of their claims. AS Belgium claims that its home and U.S. market customer structures do not indicate bundled sales. AS Belgium denies Petitioners' allegations that corporate activities indicate bundle pricing. AS Belgium states that in the most recently completed review (the 2007/2008 review), which included verification, the Department found no evidence of bundled sales. According to AS Belgium, there has been no change in its customer base since the most recent review. Moreover, they state that the Department confirmed not finding any substantial change in AS Belgium's production facilities, supplier relations, management and customer base in a recent changed circumstances review.⁸ In addition, AS Belgium finds Petitioners' comments untimely filed and without any legal basis.⁹ Thus, AS Belgium requests that the Department strike Petitioners' letters from the record.

AS Belgium asserts that the results of the price comparison test conducted by Petitioners are inaccurate because Petitioners failed to convert certain expenses reported in U.S. dollars to pounds. AS Belgium argues that Petitioners' claim regarding a certain U.S. customer's affiliation with certain other distributors dealing with a wide range of products, both subject and non-subject merchandise, lacks evidence and is unfounded.

Moreover, AS Belgium argues that Petitioners' pricing analysis with respect to the U.S. market is inaccurate. AS Belgium claims that the evidence shows that Petitioners' allegations regarding certain differences in pricing patterns are unfounded and misleading. In particular, AS Belgium objects to Petitioners' use of a net price analysis that includes an alloy surcharge because according to Petitioners this charge fluctuated throughout the POR. Therefore, AS Belgium argues that there is no legal basis to request that the Department collect additional information related to non-subject merchandise.

Department's Position: Petitioners originally made an allegation of bundled sales in their pre-

⁵ See Petitioners' April 3, 2012 submission at 6 and Appendix 2.

⁶ Petitioners cite to AS Belgium's letters dated March 22, 26, and 30, 2012.

⁷ See Petitioners' letter dated April 18, 2012, at 8.

⁸ See Stainless Steel Plate in Coils from Belgium: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review, 76 FR 6671 (October 6, 2011), unchanged in Stainless Steel Plate in Coils from Belgium: Notice of Final Results of Antidumping Duty Changed Circumstances Review, 77 FR 21963 (April 12, 2012).

⁹ See AS Belgium's April 13, 2012 submission at 1.

preliminary letters in reference to AS Belgium's home and U.S. markets. However, Petitioners' renewal of their allegation about price bundling in their case brief dated September 17, 2012, refers only to the U.S. market. Petitioners contend that AS Belgium has bundled together sales of subject and non-subject merchandise to hide dumping of subject merchandise.

While proprietary information may show that general circumstances exist that could be conducive for bundled prices, there is no evidence of bundled prices in this case, and the circumstances relied upon by Petitioners are far too general in nature to provide a basis to investigate the matter in this review. Further, pursuant to section 751(b) of the Tariff Act of 1930, as amended (Act), the Department conducted a changed circumstances review, in which we found that there has not been any substantial change in AS Belgium's production facilities, supplier relations, management and customer base.¹⁰ Further, we find that there has been no change in AS Belgium's customer base in the most recent review. Apart from that, Petitioners' question whether the sales at issue were bona fide sales for purposes of the antidumping law, however, once again no evidence on the record supports a determination that the sales of subject merchandise in the United States were not bona fide sales. Finally, in this review, AS Belgium has provided an explanation of its pricing practices and customer base in the U.S. market, and we find the information discounts Petitioners' theory.¹¹ Accordingly, we find that Petitioners did not establish that there was bundled pricing that masked dumping to the U.S. market in this review.

Comment 2: Targeted Dumping

AS Belgium argues that the Department should not apply the targeted-dumping analysis and should continue to use the average-to-average method to calculate its weighted-average dumping margin.¹² AS Belgium argues that Petitioners failed to submit evidence in support of their allegations.

AS Belgium argues that the Department should not perform a targeted dumping analysis. According to AS Belgium, the record evidence refutes the Department's targeted dumping analysis in the post-preliminary analysis. AS Belgium also argues that the Department's failure to consider AS Belgium's comments made in its April 24, 2012 submission led to the Department's faulty decision to perform a targeted dumping analysis.

Further, citing to section 777A(d)(1)(A) of the Act, AS Belgium argues that there is no legal basis for another comparison method or a finding of targeted dumping in this review.¹³ According to AS Belgium, the law does not permit the Department to use the average-to-average method in administrative reviews and, therefore, the Department's decision to perform a targeted dumping analysis is contrary to law.¹⁴

¹⁰ See Stainless Steel Plate in Coils from Belgium: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review, 76 FR 66271 (October 26, 2011), unchanged in Stainless Steel Plate in Coil from Belgium: Notice of Final Results of Antidumping Duty Changed Circumstances Review, 77 FR 21963 (April 12, 2012).

¹¹ See AS Belgium's letters dated April 13 at 3-5, April 20 at 3-4, April 27 at 2-3, and September 24, 2012 at 3-4.

¹² See AS Belgium's case brief at 22-27 dated September 17, 2012 and rebuttal brief at 2 dated September 24, 2012.

¹³ See AS Belgium's October 29, 2012, post-preliminary comments (AS Belgium's post-preliminary comments) at 2 and 10.

¹⁴ See AS Belgium's post-preliminary comments at 5.

AS Belgium claims that the Department's post-preliminary targeted dumping analysis runs against Congress's intentions that the Department's practice be consistent with "commercial realities."¹⁵ AS Belgium supports its argument by relying on a study by Dr. Robert W. Crandall, which claims that "{f} or high-value, standardized products with efficient wholesale markets such as stainless steel, attempts to target dumping may be negated quickly by steel service centers that respond quickly to price differences."¹⁶

Moreover, AS Belgium finds the "Nails" Test unreliable in this administrative review because the results generated by the "Nails" Test "may falsely indicate a positive result randomly or instances where no targeted dumping can be occurring."¹⁷ In support of its argument, AS Belgium cites to Crandall's Study which states that "Commerce should ask whether there are reasons for such price movements other than targeted dumping. Otherwise, it risks concluding that a variety of price movements driven by economic forces are initiated and driven by exporters in the form of purported "targeted" dumping when, in fact no such dumping has occurred."¹⁸

AS Belgium objects to the Department's targeted dumping analysis because the Nails Test is conducted before the margin analysis and does not account for sales with negative comparison results. Moreover, AS Belgium argues, the targeted dumping test fails to take into consideration "factors such as changes in raw material costs, surcharges or the price of natural gas, decline in demand, as well as differences in level of trade and circumstance of sale."¹⁹ In particular, AS Belgium points out that the finding of targeted dumping in the post-preliminary analysis results from an improper inclusion of alloy surcharges in the calculation of net price that are subject to considerable fluctuation.²⁰ AS Belgium also argues that other "fluctuating" expenses, such as movement expenses, should not be included in the net price calculation.²¹

AS Belgium provides an alternative net price calculation that, according to AS Belgium eliminates the "false positive" findings of price patterns exposed by the Department's post-preliminary targeted dumping analysis. AS Belgium proposes to "neutralize" differences in prices resulting from fluctuating expenses by running the Nails Test on gross unit price plus billing adjustments less discounts and rebates, AS Belgium then supplies suggested programming, which it claims will account for its suggested adjustments and to offset for sales with negative comparison results.²²

Petitioners have alleged that targeted dumping has occurred. Petitioners assert that the U.S. market data show that there is a consistent pattern of prices that differ significantly among purchasers, regions, or periods of time, and these differences cannot be taken into account using

¹⁵ See AS Belgium's post-preliminary comments at 6-7.

¹⁶ See "The Department of Commerce's Approach to Inferring "Targeted Dumping" from Differences in Prices of Exported Products." Dr. R. W. Crandall (a non-resident senior fellow at the Brookings Institution), April 21, 2012 (Crandall's Study).

¹⁷ See AS Belgium's post-preliminary comments at 9.

¹⁸ See AS Belgium's post-preliminary comments, Appendix 1 at 7.

¹⁹ See AS Belgium post-preliminary comments at 11.

²⁰ See AS Belgium post-preliminary comments at 12-14.

²¹ Id. at 12, 14.

²² See AS Belgium's post-preliminary comments at 14 and Appendices 4-5.

the average-to-average method.²³ Petitioners note that they conducted customer, region, and time-period targeted dumping analyses of AS Belgium's U.S. sales prices, using the Department's targeted dumping methodology as applied in Steel Nails²⁴ and modified in Wood Flooring.²⁵ Based on these analyses, and asserting that the Department would find that AS Belgium engaged in targeted dumping, Petitioners argue that the Department should calculate the weighted-average dumping margin for AS Belgium using an alternative to the average-to-average method and not allow offsets for sales with negative comparison results.²⁶ Petitioners argue that the Department should apply this alternative approach, given the requirements and purpose of the antidumping statute.

In response to the Department's post-preliminary analysis,²⁷ Petitioners argue that the Department appropriately examined targeted dumping. Petitioners disagree with AS Belgium's legal objections and argue that the Department appropriately exercised its legal authority by conducting a targeted dumping analysis. According to Petitioners, AS Belgium's technical complaints can be dismissed because AS Belgium's arguments rest on the faulty premise that a respondent's intent should somehow be taken into consideration as a mitigating factor in the application of the targeted dumping analysis. Petitioners also find conclusions of Crandall's Study regarding the accuracy of the targeted dumping analysis to be without merit. Petitioners argue that "The test reveals whether patterns of differences in U.S. sales pricing, no matter the origin of those differences, result in a significantly less accurate dumping margin when weight-averaging both normal value and U.S. prices in an investigation or a review, so that a more accurate margin can and should be determined by comparing the weighted - average normal value for the period of individual U.S. transaction prices," and that only the "degree of differences that cause the distortion to an average-to-average price analysis (in an investigation or a review) matters."²⁸

Department's Position: In the post-preliminary analysis of AS Belgium, the Department found a pattern of constructed export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. However, the Department found that these differences could be taken into account by the average-to-average method. Accordingly, the Department determined, pursuant to 19 CFR 351.414(c)(1), to continue to base the weighted-average dumping margin for AS Belgium on the average-to-average method for the post-preliminary results. The Department invited parties to comment on the application of the targeted dumping analysis.

²³ See Petitioners' letter dated April 12, 2012, at 2.

²⁴ U.S. Steel letter dated April 12, 2012, at 3 (citing Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at not Less Than Fair Value, 77 FR 17029 (March 23, 2012), and accompanying Issues and Decision Memorandum (Steel Nails) at Comments 1-5.

²⁵ U.S. Steel Corporation's Allegation of Targeted Dumping, dated April 12, 2012 at 3; Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum (Wood Flooring) at Comment 4.

²⁶ Id.

²⁷ See Memorandum from Christian Marsh to Paul Piquado, 2010/2011 Review of the Antidumping Duty Orders on Stainless Steel Plate in Coils ("Steel Plate") from Belgium: Post-Preliminary Analysis and Calculation Memorandum (October 22, 2012).

²⁸ See Petitioners' post-preliminary rebuttal comments dated November 2, 2012, at 5-6.

As a result of the Department's consideration of the comments presented in the case briefs from interested parties, we have continued, for these final results, the application of our targeted dumping analysis. The Department also continues to find a pattern of constructed export prices for comparable merchandise that differs significantly among certain purchasers, regions, and time periods. Further, in conjunction with other changes made in these final results, we now find that the pattern of price differences cannot be taken into account using the average-to-average method. Specifically, the average-to-average method yields a weighted-average dumping margin that is meaningfully different than the weighted-average dumping margin calculated using the average-to-transaction method. As a result, the Department has used the average-to-transaction method for purposes of calculating AS Belgium's weighted-average dumping margin on stainless steel plate in coils from Belgium for the period May 1, 2010, through April 30, 2011.

We further explain the bases for our decision, and we address the parties' comments, below.

Legal Framework For The Application of an Alternative Method in Administrative Reviews

In this review, Petitioners submitted an allegation of targeted dumping by AS Belgium. Petitioners asserted that there is a pattern of U.S. sales prices for comparable merchandise that differ significantly among purchasers, regions, and time periods. As a consequence, Petitioners asked the Department to employ the average-to-transaction comparison method to calculate AS Belgium's dumping margin in this review.

Section 771(35)(A) of Act, defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act describes three methods by which the Department may compare normal value and export price or constructed export price, and places certain restrictions on the Department's selection of a comparison method in antidumping investigations. The statute places no such restrictions on the Department's selection of a comparison method in administrative reviews. The Department's regulations at 19 CFR 351.414 describes the methods by which normal value may be compared to export price or constructed export price in administrative reviews: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the export prices or constructed export prices have been averaged together (*i.e.*, for an averaging group). The Department's regulations, at 19 CFR 351.414(c)(1), fills the silence in the statute on the choice of comparison method in the context of administrative reviews. In particular, the Department has determined that in both antidumping investigations and administrative reviews, the average-to-average method will be used "unless the Secretary determines another method is appropriate in a particular case."

The antidumping duty statute, the Statement of Administrative Action (SAA), and the Department's regulations do not address directly whether the Department should use an alternative comparison method in an administrative review based upon a targeted dumping analysis conducted pursuant to section 777A(d)(1)(B) of the Act.²⁹ In light of the statute's silence on this issue, the Department recently indicated that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed."³⁰ At that time, the Department also indicated that it would look to practices employed by the agency in antidumping investigations for guidance on this issue.³¹

In antidumping investigations, the Department examines whether to use an average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

We disagree with AS Belgium's argument that certain language in the SAA demonstrates that the Department should conduct targeted dumping analyses in investigations only. AS Belgium argues that the SAA provides an "exception" from the preferred methodology in investigations in cases of targeted dumping, while providing no exception in reviews.³² However, the SAA does not limit the types of proceedings in which the Department may undertake a targeting dumping

²⁹ See section 777A(d)(1)(B) of the Act; SAA, H.R. Rep. No. 103-316 at 842-43, Vol. 1 (1994); 19 CFR 351.414.

³⁰ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8106-07 (February 14, 2012) (Final Modification for Reviews).

³¹ See id. at 8102.

³² See AS Belgium's post-preliminary comments at 4-5.

analysis. Like the statute, the SAA simply is silent on the application of a targeted dumping analysis to reviews.

AS Belgium argues that the statute does not permit the Department to use the average-to-average method in administrative reviews in the first place, and, therefore, Petitioners' allegation of targeted dumping fails.³³ However, AS Belgium neglects the fact that the Department expressly addressed this issue in the Final Modification for Reviews, stating that section 751(a)(2) of the Act "does not make reference to any specific comparison methodology to be used in reviews."³⁴ "Accordingly, the Department considers that any of the three comparison methodologies satisfies the requirements of section 751(a)(2) {of the Act}."³⁵ In any event, as explained elsewhere, we are using the average-to-transaction method, not the average-to-average method, in this review.

Further, we disagree with AS Belgium's argument that the lack of a regulatory provision governing Petitioners' allegations of targeted dumping in administrative reviews means that the Department lacks authority to examine targeted dumping in reviews. This argument is directly contradicted by the Final Modification for Reviews, in which we stated that "when conducting reviews under the modified methodology, the Department will determine, on a case-by-case basis, whether it is appropriate to use an alternative comparison methodology by examining the same criteria the Department examines in original investigations pursuant to sections 777A(d)(1)(A) and (B) of the Act."³⁶ Further, the Department clearly stated that "interested parties will have the opportunity to comment on whether an alternative comparison method is warranted during the normal course of review."³⁷ AS Belgium is therefore incorrect that there is no mechanism for Petitioners to allege, or the Department to examine, whether application of an alternative comparison method is warranted in an administrative review.

Targeted Dumping Analysis of AS Belgium's Sales

In recent antidumping investigations where the Department has addressed targeted dumping allegations, the Department has employed the Nails test³⁸ for each respondent subject to an allegation to determine whether a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market.³⁹ The Nails test involves a two-step process, as described below,

³³ See AS Belgium's post-preliminary comments at 4-5.

³⁴ Final Modification for Reviews, 77 FR at 8104.

³⁵ Id.

³⁶ Id.

³⁷ Id., 77 FR at 8107.

³⁸ See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (collectively, "Nails"), as modified in more recent investigations, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011); see also Mid Continent Nail Corp. v. United States, Slip. Op. 2010-47 (Ct. Int'l Trade May 4, 2010) and Mid Continent Nail Corp. v. United States, Slip. Op. 2010-48 (Ct. Int'l Trade May 4, 2010) (collectively "Mid Continent Nail").

³⁹ See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010); Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and

that determines whether the Department should consider whether the average-to-average method is appropriate in a particular situation.

In the first stage of the test, the “standard-deviation test,” we determined the share of the alleged targeted purchaser, region, or time-period sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. We calculated the standard deviation on a product-specific basis (*i.e.*, by control number (CONNUM)) using the weighted-average prices for the alleged targeted purchasers, region, or time periods and the purchasers, regions, or time periods not alleged to have been targeted. If that share did not exceed 33 percent, then we did not conduct the second stage of the Nails test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the Nails test.

In the second stage, we examined all sales of identical merchandise (*i.e.*, by CONNUM) sold to the alleged targeted group which passed the standard-deviation test. From those sales, we determined the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted group and the next higher weighted-average price of sales to a non-targeted group exceeds the average price gap (weighted by sales volume) between the non-targeted groups. We weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. In doing this analysis, the alleged targeted group’s sales were not included in the non-targeted groups; the alleged targeted group’s average price was compared only to the average prices for the non-targeted groups. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, then we determined targeting occurred.

As explained in the Post-Preliminary Analysis,⁴⁰ if the Department’s two-step analysis confirmed the allegation of targeting and sufficient sales were found to have been targeted (*i.e.*, to have passed the two-step Nails test), then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method.⁴¹ In the Post-Preliminary Analysis, we found no meaningful difference between the results of the average-to-average method and the average-to-transaction method, and the average-to-average method was used to calculate the weighted average dumping margin for AS Belgium.⁴²

For these final results, we continue to find that a pattern of constructed export prices for

Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010); Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).

⁴⁰ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, 2010/2011 Review of the Antidumping Duty Orders on Stainless Steel Plate in Coils (Steel Plate) from Belgium: Post-Preliminary Analysis Memorandum, dated October 22, 2012 (Post-Preliminary Analysis).

⁴¹ See Post-Preliminary Analysis at 3.

⁴² See Post-Preliminary Analysis at 3.

comparable merchandise that differ significantly among purchasers, regions, or time periods does exist, and have considered whether the average-to-average method can take these price differences into account. Further, the Department finds for these final results that the average-to-average method cannot account for the observed price differences, as there now exists a meaningful difference in the weighted-average dumping margins calculated using the average-to-average method and the average-to-transaction method. As a result, the Department has used the average-to-transaction method to calculate AS Belgium's weighted-average dumping margin on stainless steel plate in coils from Belgium.⁴³

AS Belgium argues that when non-dumped sales are excluded, the Nails test is negative, and that Congress did not intend for sales with no dumping margin to factor into a targeted dumping finding.⁴⁴ We disagree. Section 777A(d)(1)(B)(i) of the Act speaks only to whether there is a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." Section 777A(d)(1)(B) of the Act does not refer to a pattern of dumping margins; nor does it call for a comparison of the export prices or constructed export prices to normal value prior to determining whether there is a pattern. Similarly, the Nails test, affirmed in Mid Continent Nail, seeks only to determine whether a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods exists within the U.S. market. The Court of International Trade has found that this test "do{es} not violate the statutory language" of section 777A(d)(1)(B)(i) of the Act.⁴⁵ Therefore, the Department has acted consistent with congressional intent.

AS Belgium also argues that by conducting the targeting test on the basis of net prices, the Department supposedly failed to account for the fact that any targeting found is the result of alleged random fluctuations in alloy prices and the "alloy surcharge" charged by AS Belgium to its customers.⁴⁶ We disagree. The Department uses net prices in its targeting analysis because "export price (or constructed export price)," as that term is used in section 777A(d)(1)(B)(i) of the Act, means "a price that is net of any price adjustment ... that is reasonably attributable to the subject merchandise...."⁴⁷ The alloy surcharges are price adjustments that are reasonably attributable to the sale of subject merchandise. AS Belgium offers no reason why the term "export price (or constructed export price)" should mean something different in section 777A(d)(1)(B)(i) of the Act than it means everywhere else it is used in the antidumping statute.⁴⁸

Further, we disagree with AS Belgium's insinuation that when there is a pattern of export prices or constructed export prices that differ significantly among purchasers, regions, or time periods, the statute requires the Department to look behind the elements of those prices to determine which elements account for the differences and which do not. The statute does not require such an analysis.⁴⁹ Again, "export price (or constructed export price)" is a price that is net of any

⁴³ See Final Sales Calculation Memo.

⁴⁴ See AS Belgium's post-preliminary comments at 11.

⁴⁵ Mid Continent Nail Corp. v. United States, Slip. Op. 2010-47 at 14.

⁴⁶ See AS Belgium's post-preliminary comments at 11-14.

⁴⁷ 19 CFR 351.401(c).

⁴⁸ Our analysis also holds for the other types price adjustments mentioned by AS Belgium, such as discounts or rebates.

⁴⁹ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances

price adjustments, such as the alloy surcharges. The question is whether those net prices differ significantly among purchasers, regions, or time periods. Once they do, section 777A(d)(1)(B)(i) of the Act is satisfied. We note, also, that the Department in this review has used invoice date as the date of sale, per AS Belgium's request.⁵⁰ Part of the reason for using invoice date as the date of sale is that "there are ... fluctuations in the alloy surcharge" from the date of order confirmation to the date of invoice.⁵¹ At invoice date, the material terms of sale (including price, which includes the alloy surcharge) are set. This means that the purchasers are aware of the alloy surcharge amount at the time of sale, *i.e.*, at the time that the price discrimination that is the focus of the antidumping duty law occurs.

Finally, AS Belgium argues that the individual tests – by purchaser, region, and time period – produce conflicting results, and that this invalidates our targeted dumping analysis.⁵² AS Belgium appears to be arguing that a positive result of the analysis for a customer among regions is a "false positive" unless the test also is positive for that customer among other customers. AS Belgium, however, misinterprets the statute and the Nails test. The statute does not require that targeted dumping be found on two or three bases combined. That is, it does not stipulate that targeted dumping only occurs when there are significant price differences among both customers and regions, or among both regions and time periods, or among all three. Section 777A(d)(1)(B)(i) of the Act uses the term "or" to connect the three bases of analysis – purchasers, regions or periods of time. AS Belgium's argument is without merit.

Accordingly, for the final results, the Department has applied the average-to-transaction method for purposes of determining AS Belgium's weighted-average dumping margin on stainless steel plate in coils from Belgium.

Comment 3: Constructed Value (CV) Profit and Selling Expense Ratios

Calculation of CV Profit

For the preliminary results, AS Belgium had no above-cost home market sales to serve as the basis for CV profit. Therefore, in accordance with section 773(e)(2)(B)(iii) of the Act, which provides for the use of "any other reasonable method" to determine an amount for CV profit in the absence of actual data, we relied on the CV profit ratio calculated for AS Belgium in the 2007/2008 review, the most recently completed review in this case. See Preliminary Results, 77 FR at 32520.

AS Belgium argues that the Department's decision to use the CV profit ratio calculated in the 2007/2008 review is contrary to law, congressional statements, Court interpretation, and

Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17423 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1 ("The Act and legislative history do not require that the Department conduct an additional analysis, as urged by the respondents, and determine the reasons that significant differences in prices exist."). The Department also noted that "Congress did not speak to the 'intent' of the producers or exporters in setting prices that are significantly different as between" the targeting groups. *Id.*

⁵⁰ See Preliminary Results, 77 FR at 32519.

⁵¹ See AS Belgium August 16, 2011, Section A Questionnaire Response at A-22.

⁵² See AS Belgium's post-preliminary comments at 15.

Department practice. AS Belgium alleges that, in using the profit rate from the 2007/2008 review as a proxy for the current review, the Department ignored its past practice of considering the contemporaneity of the selected surrogate.⁵³ In fact, AS Belgium asserts, the Department has never chosen data from a period more than twelve months immediately prior to the POR.

Citing NTN Bearing Corp. v. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995) and Fabrique de Fer de Charleroi S.A. v. United States, 994 F. Supp. 395, 400 (CIT 1998), AS Belgium asserts that the courts have interpreted this particular provision of the law as requiring the result to be reasonable and also to reflect a “rational connection” to record facts. The respondent argues that any rational connection, however, between the 2007/2008 rate and the data it is supposed to reflect is belied by evidence on the record. AS Belgium points to information from Aperam S.A.’s (AS Belgium’s parent) financial report, which shows declining steel prices, steel shipments, and earnings from 2008 through 2010, and argues that these economic factors render the 2007/2008 data unusable for the current POR. AS Belgium also asserts that the fact that using the 2007/2008 profit rate changes the margin by more than 15 percentage points establishes that this particular surrogate is not reflective of commercial reality.

AS Belgium argues that, in addition to selecting a surrogate that is not reflective of profit experience in the current review, the Department failed to explain the basis for its determination, and did not place any information on the record putting its selection in context, nor did it allow AS Belgium to do so. Moreover, argues AS Belgium, the Department failed to calculate a profit cap, even though it has several options to satisfy the profit cap requirement. Citing Atar S.R.L. v. United States, 703 F. Supp. 2d 1359, 1364 (CIT 2010) (Atar), AS Belgium maintains that the Department must still attempt to comply with the profit cap requirement through the use of facts available even in the absence of record data.

AS Belgium also suggests that the Department’s use of the 2007/2008 profit rate, because it is “astronomical,” constitutes adverse facts available. The respondent asserts that, while there are instances in which the Department may have to determine CV profit under alternative (iii) on the basis of facts available, the SAA specifically prohibits the Department from making an adverse inference, unless the company has withheld requested information.

AS Belgium submits that the Department should select from among the following alternative sources on the record to determine CV profit: (1) the actual profit experience based on its reported home market sales, (2) the actual POR profit experience of AS Belgium’s Genk facility (which produces both subject and non-subject merchandise), (3) the publicly available 2010 financial statements of Aperam S.A. (AS Belgium’s parent), (4) the earnings of the Genk facility for a portion of the POR, (5) the 2010 profit of AS Belgium’s service center, or (6) the 2010 financial statements of ArcelorMittal, AS Belgium’s parent for a portion of the POR.

⁵³ AS Belgium cites several cases in support of its argument, among them: Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 77 FR 17029 (March 23, 2012); Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 10876 (February 28, 2011) (Lined Paper from India); Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part, 75 FR 18794, 18800 (April 13, 2010); and Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review, 76 FR 56396 (September 13, 2011) (Magnesium from Russia).

AS Belgium argues that, in addition to being consistent with the statute, court interpretation, and Department practice, these alternative profit rate calculations are all much more reasonable than the methodology employed by the Department, as they accurately reflect AS Belgium's experience during the POR. AS Belgium also maintains that, because all of Aperam S.A.'s and AS Belgium's data satisfies the first statutory alternative (i.e., the actual amounts incurred and realized by the respondent in connection with the production and sale in the foreign country of merchandise in the same category as the subject merchandise), the Department may not disregard these data and use facts available to invoke another option. AS Belgium further asserts that the CIT in Floral Trade Council v. United States, 41 F. Supp. 2d 319, 329-332 (CIT 1999) (Floral Trade) and Atar found that the use of a zero profit is required under section 773(e)(2)(B) of the Act, in certain circumstances.

Petitioners respond that the Department's choice of a surrogate CV profit rate is supported by substantial evidence on the record and in accordance with the law. Concerning AS Belgium's argument that the Department's decision to use the profit rate from the 2007/2008 review ignores our past practice with respect to the contemporaneity of surrogate data, Petitioners argue that this criterion is the last of several elements considered in determining an alternative source of profit under section 773(e)(2)(B)(iii) of the Act.

According to Petitioners, all of the alternative CV profit sources proposed by the respondent are without merit. Petitioners take issue with AS Belgium's suggestion that the Department use a profit rate based on the company's home market sales, arguing that such sales are outside the ordinary course of trade and consequently cannot be used for CV profit under section 772(e)(2)(A) of the Act. Petitioners assert that below-cost home market sales must be disregarded in favor of something else to arrive at CV profit. Petitioners maintain that the second option proposed by AS Belgium, the actual POR experience for the Genk facility as a whole, is plagued with the same problem in that this approach includes sales of those same below-cost home market sales for which an alternative is sought, and also includes U.S. sales of potentially dumped merchandise. Petitioners argue that, wherever possible, the Department avoids relying on export sales to the United States to determine profit for CV and that it would be circular to rely on AS Belgium's potentially dumped U.S. sales to determine CV, whose purpose is to benchmark whether the subject merchandise was dumped.

As for the Genk facility profit for a portion of the POR, Petitioners argue that this alternative would be even less probative of the entire profit experience and would also contain the profit on disregarded home market sales and sales to the United States. Similarly, Petitioners argue, the 2010 profit of the AS Belgium service center reflects processing and distributing of sales to third countries. Petitioners continue that the profit experience of Aperam S.A., AS Belgium's parent, would be a further admixture of AS Belgium's below-cost home market sales, third country sales, exports of subject merchandise to the United States, and other stainless flat-rolled steel products. Finally, Petitioners argue that the profit of ArcelorMittal is not a viable alternative for determining CV profit, given that the company also produces carbon steel, a product that is not in the same general category as the subject merchandise.

Department's Position:

CV Profit Ratio

As noted above, for the Preliminary Results, AS Belgium had no above-cost home market sales to serve as the basis for calculating CV profit. Therefore, we looked to the three statutory alternatives to determine this amount and, pursuant to section 773(e)(2)(B)(iii) of the Act (*i.e.*, the use of "any other reasonable method"), we used the selling expense and profit ratios that were calculated for AS Belgium's home market sales in the 2007/2008 administrative review. However, after considering the arguments raised by interested parties and reexamining the availability of data unique to the instant proceeding, as explained below, for these final results we have revised the calculation of CV to base CV profit on the 2010 fiscal year profit experience of Aperam S.A., AS Belgium's parent.

The three alternatives provided at section 773(e)(2)(B) of the Act for determining CV profit when the actual data are not available, either because there are no home market sales or because all such sales are below cost, include: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

In considering the availability of data under each of these statutory alternatives, as we explained in the Preliminary Results, the alternative under section 773(e)(2)(B)(ii) of the Act (*i.e.*, the use of data from other respondents) is not an option in this case because AS Belgium is the sole respondent subject to the current review. Concerning AS Belgium's argument that alternative (i) may be invoked here because all products produced by AS Belgium and the broader Aperam S.A. entity are in the same general category as the subject merchandise, we disagree. Section 773(e)(2)(B)(i) of the Act provides for the use of a respondent's data specifically "in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise" (emphasis added). In this case, the profit calculations proposed by AS Belgium, while they do include sales of merchandise in the same general category as the subject merchandise (with the exception of the ArcelorMittal data), are not specific to sales made in the foreign country (*i.e.*, Belgium). See 19 CFR 351.405(b)(2). Consequently, the AS Belgium and Aperam S.A. data do not meet the requirements of this particular statutory alternative.

Therefore, the only other option in this case is to base CV profit on "any reasonable method," pursuant to section 773(e)(2)(B)(iii) of the Act. As noted above, for the Preliminary Results, we used the profit ratio calculated for AS Belgium's home market sales in the 2007/2008 administrative review, the most recently completed review of this proceeding. Normally, under this statutory alternative, if available, we prefer to use a respondent's own data from a prior

review as a surrogate for home market profit. This methodology mimics most closely the “preferred method” for calculating profit under section 773(e)(2)(A) of the Act because it is based on actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market. See, e.g., Magnesium from Russia, and accompanying Issues and Decision Memorandum at Comment 1b. This approach provides a reasonable estimation of profit experience where general market conditions and earnings from year to year are relatively consistent. Indeed, such an approach would even serve as a reasonable approximation of profit where a respondent’s own data is taken from a period even earlier than the immediately-preceding review, provided there is no record evidence to suggest that the general market conditions related to both the production inputs and the merchandise under consideration in the earlier review period are somehow unrepresentative of the conditions during the review period for which a surrogate CV profit is required.

However, in this case, the data from the 2007/2008 review are based on the profit experience of a company operating in an economic climate considerably different from that of 2010/2011, a time during which companies were suffering the effects of the global financial crisis. As the CIT has articulated in the past, the Department’s ultimate goal in calculating CV profit is to approximate the home market profit experience.⁵⁴ See Geum Poong Corp. v. United States, 193 F. Supp. 2d 1363, 1370 (CIT 2002). Information on the current record regarding declining steel shipments, declining steel prices, and declining earnings for Aperam S.A. and its subsidiaries from 2008 through 2010 establishes that using the 2007/2008 data as a proxy for the 2010-2011 POR does not accomplish the goal of reasonably approximating the home market profit experience for the current administrative review. See, e.g., A.S. Belgium’s September 27, 2011 response at Appendix D-21(Aperam S.A.’s 2010 financial report at 12, 17 and 203).

With this in mind, we have reevaluated the other data available on the record upon which to base CV profit and have carefully weighed the alternative calculations to determine which is the most representative of home market profit for stainless steel products during the POR. While AS Belgium proposes the use of a profit rate based either on its actual home market sales data or on the actual profit experience of the Genk facility as a whole, we disagree that these are viable alternatives. We have interpreted the statute as requiring a positive amount for CV profit. See, e.g., Magnesium from Russia, and accompanying Issues and Decision Memorandum at Comment 1b. The SAA at 840 supports this position, establishing that CV serves as a proxy for a sales price, and because a fair sales price would recover selling, general and administrative expenses (SG&A) and would include an element for profit, CV must include an amount for SG&A expenses and for profit. As to AS Belgium’s assertion that, pursuant to the CIT’s ruling in Floral Trade, a zero profit is required under section 773(e)(2)(B) of the Act under certain circumstances, we note that this decision never became final and conclusive because there was a settlement in that case.

With regard to the actual profit for AS Belgium’s Genk facility for only a portion of the POR, we normally require the use of a full year’s worth of cost and sales data. The use of monthly costs

⁵⁴ In addition, the preamble to the Department’s regulations notes that sales used as the basis for CV profit should not lead to “irrational or unrepresentative results.” See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27360 (May 19, 1997).

fails to accurately capture those costs that are incurred only once or twice during the year, but relate to the full year's production activity (e.g., depreciation expense, year-end accruals, major repairs and maintenance). In addition, the use of monthly costs results in erratic production cost information during periods of fluctuating input costs. Accordingly, the Department has adopted a consistent and predictable approach of using annual average data for calculating the elements of COP or CV, the result being a normalized, average cost to be compared to sales prices covering the same period of time. The result of this approach smoothes out normal cost fluctuations that occur during an accounting period. See, e.g., Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352 (February 9, 2010) and accompanying Issues and Decision Memorandum at Comment 5. Basing the profit rate on the experience of a company for an entire year mitigates the above-noted concerns. Another of AS Belgium's proposals is to base CV profit on the 2010 profit experience of its service center. However, this calculation does not take into account any general and administrative expenses, costs which the Department normally includes in its profit calculations.

Concerning the consolidated Aperam S.A. 2010 financial statements, we note that this information includes the profit experience of AS Belgium's below-cost home market sales for which we are seeking an alternative and U.S. sales of potentially dumped subject merchandise. To the extent possible, however, we prefer to avoid relying on sales to the United States as a basis for CV profit. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001) and accompanying Issues and Decision Memorandum (Magnesium from Israel) at Comment 8. Finally, we do not consider ArcelorMittal's 2010 financial statements to be an appropriate source for CV profit in this case because the company's product line is focused on long carbon and flat carbon products. Given this product mix, using the ArcelorMittal data as a surrogate would take us farther from our objective of approximating profit earned on sales of merchandise in the same general category as the subject products (i.e., stainless steel products). Because certain additional facts related to the various profit calculations are business proprietary in nature, see Memorandum to Neal M. Halper, Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Aperam Stainless Belgium, dated November 30, 2012, for further discussion.

Although every one of the alternative sources on the record for determining CV profit has flaws, we find that the consolidated Aperam S.A. financial statements represent the best information available on the record and provide the most reasonable measure of profit during the POR. Because Aperam S.A.'s production is focused almost exclusively on stainless coiled products, this option conforms with the preference for the use of data relevant to the same general category of products as the subject merchandise. Moreover, because the profit rate is derived from Aperam S.A.'s publicly available audited financial statements, the information is reliable, independent, and reflects a full year's profit experience. The 2010 financial statements also cover a majority (i.e., 8 months) of the 2010-2011 POR. Although we acknowledge that, as noted above, the Aperam S.A. data includes AS Belgium's below-cost home market sales for which we seek an alternative profit rate, as well as potentially dumped sales to the United States, using the financial statements of the broader Aperam entity serves to dilute the impact of those sales on the overall profit rate.

For the final results, in the absence of more appropriate data, we have used the 1.85 percent

profit rate based on Aperam S.A.'s 2010 publicly available financial statements as a surrogate for CV profit under the third statutory alternative (i.e., based on "any other reasonable method"). In addition, we are applying option (iii) without quantifying a profit cap because we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise in the same general category as the subject merchandise.

As an additional matter, we address certain other arguments raised by AS Belgium in its case brief related to our decision in the Preliminary Results to use the profit rate from the 2007/2008 review. AS Belgium alleges that the Department failed to quantify the profit cap for the Preliminary Results. In previous cases, however, the Department has calculated CV profit under section 773(e)(2)(B)(iii) of the Act without quantifying the profit cap, as facts available. See, e.g., Lined Paper from India, and accompanying Issues and Decision Memorandum at Comment 3, and Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 26. The legislative history indicates that Congress recognized that there may be instances where, due to a lack of data, the Department may need to use facts available and calculate a CV profit rate pursuant to section 773(e)(2)(B)(iii) of the Act without quantifying a profit cap. See the SAA at 841. With respect to this provision of the statute, it is clear that Congress intended the profit cap to be (1) based on home market sales information of the same general category of products as the subject merchandise (2) non-aberrational to the industry under consideration (i.e., "the amount normally realized"), and (3) not based on the data of the respondent for which the Department is calculating CV. However, we have examined the available data in this case and conclude that there is no information that would enable us to calculate the profit normally realized by producers other than AS Belgium in connection with domestic market sales of merchandise in the same general category as the subject products. Consequently, as noted above, we have not quantified a profit cap in applying this statutory alternative to determine CV profit for AS Belgium.

With respect to AS Belgium's contention that the Department's application of the profit rate from the 2007/2008 review constituted the use of facts available with an adverse inference, we note that this argument is moot because we are no longer using the 2007/2008 profit rate. In any event, that rate was not an adverse rate, because the magnitude of a chosen surrogate rate does not in and of itself render that surrogate adverse in nature.

Finally, AS Belgium argues that the Department failed to provide interested parties a description of the method chosen to determine CV profit and an explanation of why it was selected. We disagree. In the Preliminary Results, we provided a description and explanation of the profit rate chosen, and we are doing the same with the new profit rate used in the final results.

Calculation of CV Selling Expense Ratio

AS Belgium contends that in the Preliminary Results, the Department improperly based the selling expenses ratio on information from the 2007/2008 POR. AS Belgium gives several reasons why it is inappropriate to rely on AS Belgium's selling expense from the 2007/2008

review. AS Belgium states that the Department's reliance on the selling expense ratio from the 2007/2008 review data does not satisfy the statutory requirements. Furthermore, AS Belgium claims that the reported indirect selling expenses in the current review apply to the same general category of merchandise, *i.e.*, stainless steel flat products (plate in coils, and non-subject cut-to-length plate). Therefore, according to AS Belgium, consistent with section 773(e)(2)(B) of the Act, the Department should use the reported selling expenses. AS Belgium further argues that in the final results the Department must consider the contemporaneity of the chosen data as a primary factor in determining the selling expense ratio. According to AS Belgium, evidence shows that the Department's long standing practice is to select surrogates for CV profit and selling expenses contemporaneous with the POR.⁵⁵ See AS Belgium's rebuttal brief dated September 24, 2012 at 8. Therefore, as the appropriate source for selling expenses, AS Belgium advocates the use of the selling expenses reported in the current proceeding. In support of its argument AS Belgium cites to Pineapple from Thailand,⁵⁶ where the Department based CV selling expense on the respondent's reported sales and Magnesium from Israel.⁵⁷

For all these reasons, according to AS Belgium, the Department should not continue to use AS Belgium's selling expense ratio from the 2007/2008 POR. For the final results, AS Belgium urges the Department to recalculate AS Belgium's selling expense ratio based on the current POR rather than 2007/2008 POR.

In their rebuttal brief, Petitioners argue that, for the final results, the Department should continue to use AS Belgium's selling expense rate from the 2007-2008 POR. Petitioners find AS Belgium's reliance on Pineapple from Thailand and Magnesium from Israel inappropriate because, according to Petitioners, there is no record evidence demonstrating that the circumstances of both cases can be applicable to the current proceedings. In particular, Petitioners take issue with AS Belgium's reasoning that contemporaneity in both cases is the main criterion for selecting data. In support of their view, Petitioners find that in Magnesium from Israel "contemporaneity is the third factor weighted by the Department in conjunction with other consideration." See Magnesium from Israel, and accompanying Issues and Decision Memorandum at Comment 8.

Accordingly, for the final results Petitioners argue that the information that is available from the 2007-2008 review is the most appropriate source for the selling expense ratio.

Department's Position:

Selling Expense Ratio

The Department has determined that it would be inappropriate to rely on AS Belgium's 2007/2008 financial data for calculating the selling expenses ratio in this review. As described above, economic conditions during the 2007/2008 period were far different than conditions

⁵⁵ See Magnesium from Israel, and accompanying Issues and Decision Memorandum at Comment 8.

⁵⁶ See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 44490 (August 8, 2007).

⁵⁷ See also Notice of Preliminary Determination at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 21325, 21327 (April 30, 2007).

during the period of the instant review. Thus, for the final results, the Department finds that it is more appropriate to use AS Belgium's information from the current review to derive the selling expense ratio.

Therefore, we have revised our Preliminary Results regarding the calculation methodology for selling expense ratio. For these final results, we have determined that AS Belgium's selling expense ratio from the current period of review constitutes the best available information on the record for the selling expense rate for AS Belgium. For the final results we calculated selling expenses for CV using below-cost comparison market data.

Comment 4: Verification

In letters dated March, 20, March 23, April 6, April 12, April 24, and in the September 17, 2012, case brief, Petitioners requested that the Department conduct verification of AS Belgium's home market and U.S. market sales databases in accordance with 19 C.F.R 351.307(b)(1)(iv).

Petitioners note that verification of AS Belgium's data is warranted for good cause due to issues of targeted dumping and bundled sales. Petitioners note that a 60-day extension of the final results offered additional time to conduct a full verification.

AS Belgium argues that Petitioners' request for verification is untimely because Petitioners failed to submit a request for verification within 100 days of the initiation of the administrative review as outlined by the Department's regulations. See AS Belgium's September 24, 2012, rebuttal brief at 3. Further, AS Belgium finds Petitioners' request for verification is without any basis. AS Belgium states that in the most recently completed review, which included verification (the 2007/2008 review)⁵⁸ the Department found no indication of bundled sales. The Department confirmed not finding any substantial change in AS Belgium's production facilities, supplier relations, management and customer base in the changed circumstances review. Therefore, AS Belgium concludes it is inappropriate to request additional information and no good cause for verification has been shown.

Department's Position: The Department's regulations provide that factual information upon which the Secretary relies for the final results of an administrative review will be verified if a domestic party timely requests verification and the Secretary has not conducted verification during either of the two immediately preceding administrative reviews. See 19 CFR 351.307(b)(1)(v). The Department conducted verification of AS Belgium in the most recently completed administrative review. Further, we find that no good cause for verification exists within the meaning of 19 CFR 351.307(b)(1)(iv). Therefore, in accordance with 19 CFR 351.307(b)(1), we determined not to verify AS Belgium in this administrative review.

Comment 5: Customs Instructions

AS Belgium states that the Department erred in using 9.86 percent as the "all-others rate" in its draft customs instructions for stainless plate in coils from Belgium. See AS Belgium's case brief, at 27, dated September 17, 2012.

⁵⁸ See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 74 FR 53468 (October 19, 2009) and accompanying Issue and Decision Memorandum.

AS Belgium points out that the correct "all-others rate" should be 8.54 percent as established in the implementation of the findings of the WTO Panel in U.S.-Zeroing (EC).⁵⁹

Department's Position: We have determined that we inadvertently erred with respect to the "all-others rate" for stainless steel plate in coils from Belgium listed in the Department's draft customs instructions for the preliminary results. Accordingly, for these final results, the Department made changes to the customs instructions. The "all-others rate" has changed from 9.86 to 8.54 percent as a result of this correction.

IV. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

Agree

✓

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 30, 2012

(date)

⁵⁹ See Implementation of the Findings of the WTO Panel in US-Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007).