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Investigation
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October 6, 2020

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 Brazil

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Brazil 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 8, 2020, Commerce received an antidumping duty (AD) petition concerning imports of aluminum sheet from Brazil, filed in proper form on behalf of the Aluminum Association Common Alloy Aluminum Sheet 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 Brazil.²

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 subheadings listed in the “Scope of the Investigations,” in the appendix.³ Accordingly, on March 24, 2020, Commerce 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, we received comments on behalf of the petitioners and Novelis do Brasil Ltda. (Novelis Brasil) regarding the CBP data and the respondent selection methodology.⁵ In their submission, the petitioners stated that the two largest producers/exporters account for the vast majority of the total imports of aluminum sheet from Brazil.⁶ Novelis Brasil stated in its submission that it should be selected as a mandatory respondent because it is one of the largest producers and exporters of aluminum sheet from Brazil.⁷

On April 21, 2020, Commerce selected Companhia Brasileira de Alumínio (CBA) and Novelis Brasil for individual examination as mandatory respondents in this investigation.⁸ CBA and Novelis Brasil are the two producers/exporters with the largest volume of subject exports during the period of investigation (POI) based on the CBP data we obtained.⁹ Accordingly, we issued the AD questionnaire to CBA and Novelis Brasil.¹⁰

On April 24, 2020, the U.S. International Trade Commission 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 Brazil.¹¹

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of

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*).

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, “Common Alloy Aluminum Sheet from Brazil – Petitioners’ Comments on Respondent Selection,” dated April 10, 2020 (Petitioners’ Respondent Selection Comments); and Novelis Brasil’s Letter, “Common Alloy Aluminum Sheet from Brazil: Comments on CBP Data,” dated April 10, 2020 (Novelis Brasil’s Respondent Selection Comments).

⁶ See Petitioners’ Respondent Selection Comments at 1-2.

⁷ See Novelis Brasil’s Respondent Selection Comments at 1.

⁸ See Memorandum, “Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Brazil: Respondent Selection,” dated April 21, 2020.

⁹ *Id.* at Attachment.

¹⁰ See Commerce’s Letter, Antidumping Duty Questionnaire, dated April 22, 2020.

¹¹ 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).

the investigation, as well as on the appropriate physical characteristics of aluminum sheet to be reported in response to Commerce's AD questionnaire.¹² 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.¹³ On May 19, 2020, Commerce determined the product characteristics applicable to this investigation.¹⁴

From May 4 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 rebuttal comments.¹⁵ We issued the Preliminary Scope Decision Memorandum on October 6, 2020, concurrently with this memorandum.¹⁶

On June 4, 2020, Commerce issued revised descriptions for certain product characteristics.¹⁷ On June 11, 2020, the petitioners submitted comments in response to requests from respondents in other aluminum sheet investigations to rescind the revisions made in Commerce's Revised Product Characteristics Memo.¹⁸ On June 12, 2020, Commerce officials spoke via telephone with counsel for the petitioners, counsel for C.S. Aluminium Corporation, and counsel for respondents in other aluminum sheet investigations regarding Commerce's Revised Product Characteristics Memo.¹⁹ On June 16, 2020, we issued the final product characteristics in this investigation.²⁰

On July 29, 2020, Commerce postponed the preliminary determination of this investigation by

¹² See *Initiation Notice*, 85 FR at 19445.

¹³ See Memorandum, "Phone Call with Outside Counsel," dated May 19, 2020.

¹⁴ See 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.

¹⁵ 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: Deadline for Scope Comments: Ex Parte Telephone Call with Counsel for the Aluminum Association Trade Enforcement Working Group," dated May 29, 2020.

¹⁶ 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).

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: Product Characteristics Correction," dated June 4, 2020 (Revised Product Characteristics Memo).

¹⁸ 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.

¹⁹ See Memorandum, "Meeting with Outside Counsel," dated June 16, 2020.

²⁰ 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).

50 days, to October 6, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).²¹

Between May and September 2020, CBA and Novelis Brasil submitted timely responses to sections A through E of Commerce's initial and supplemental questionnaires.²²

On September 16 and 17, 2020, the petitioners submitted comments with respect to CBA and Novelis Brasil for consideration in the preliminary determination.²³ On September 21, 2020, Novelis Brasil submitted rebuttal comments in response to the petitioners' September 17, 2020, comments.²⁴

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 2020.²⁵

IV. SCOPE OF INVESTIGATION

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

²¹ 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); and 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," dated July 16, 2020.

²² See CBA's May 26, 2020 Section A Questionnaire Response (CBA's AQR); CBA's June 23, 2020 Sections B and C Questionnaire Response; CBA's June 29, 2020 Section D Questionnaire Response; CBA's July 24, 2020 Supplemental Section A Response; CBA's August 14, 2020 Supplemental Sections B and C Response; CBA's August 31, 2020 Supplemental Section D Response; CBA's September 16, 2020 Supplemental Section A Response; CBA's September 20, 2020 Supplemental Sections B and C Response; CBA's September 21, 2020 Supplemental Section A Response; CBA's September 23, 2020 Supplemental Section D Response; (CBA's 2nd SDQR); Novelis Brasil's May 27, 2020 Section A Response (Novelis Brasil's AQR); Novelis Brasil's June 23, 2020 Section B Response (Novelis Brasil's BQR); Novelis Brasil's June 23, 2020 Section D Response; Novelis Brasil's June 30, 2020 Section C Response (Novelis Brasil's CQR); Novelis Brasil's June 30, 2020 Section E Response; Novelis Brasil's July 17, 2020 Supplemental Section A Response (Novelis Brasil's SAQR); Novelis Brasil's August 10, 2020 Supplemental Sections B and C Response (Novelis Brasil's SBCQR); Novelis Brasil's August 18, 2020 Section 232 Response; Novelis Brasil's August 31, 2020 Sections D and E Supplemental Section X Response; Novelis Brasil's September 11, 2020 Supplemental Sections A, B, and C Response; and Novelis Brasil's September 30, 2020 Supplemental Section C Response (Novelis Brasil's 3rd SQR).

²³ See Petitioners' Letters, "Common Alloy Aluminum Sheet from Brazil – Petitioners' Pre-Preliminary Comments Concerning CBA," dated September 16, 2020; and "Common Alloy Aluminum Sheet from Brazil – Petitioners' Pre-Preliminary Comments Concerning Novelis do Brasil," dated September 17, 2020.

²⁴ See Novelis Brasil's Letter, "Common Alloy Aluminum Sheet from Brazil: Novelis do Brasil's Reply To Petitioners' Pre-Preliminary Determination Comments," dated September 21, 2020.

²⁵ See 19 CFR 351.204(b)(1).

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁶ in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁷ 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. Statutory Framework

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.

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.²⁸ 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."²⁹ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁰ 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.³¹ Section 776(b)(2) of the Act states that an adverse inference may

²⁶ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁷ *See Initiation Notice*, 85 FR at 19444.

²⁸ *See* 19 CFR 351.308(a).

²⁹ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 870 (SAA); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁰ *See, e.g., 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); *see also Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).

³¹ *See* SAA at 870; and *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),

include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."³² 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.³³

B. Use of Facts Available

CBA

As discussed in detail in the corresponding CBA COP/CV AFA Memo, we preliminarily find that CBA failed to comply with Commerce's multiple requests for information regarding the company's reported costs.³⁴ Specifically, we preliminarily find that CBA failed to provide sufficient translations for its 2nd SDR Exhibits SSD-5 (screen shots from CBA's systems); SSD-11 (scrap consumed versus scrap generated); SSD-14 (invoices); SSD-17 (idled assets); SSD-18 (reconciliation of MUC inventory movement schedule to monthly trial balance); SSD-19 (resubmission of Exhibit D-10); SSD-20 (scrap sales); SSD-21 (Worksheet 2); SSD-25 (worksheet 2); SSD-27 (Votorantim S.A. Shared Services); SSD-33 (worksheets 1 and 2); SSD-34 (worksheets 6 and 7); and SSD-35 (overall reconciliation), as requested by Commerce.³⁵ Failure to provide complete translations significantly impeded the proceeding by limiting our ability to understand CBA's submitted cost information. In addition, we preliminarily find that CBA provided incomplete and incomprehensible explanations or failed to respond to questions regarding: the valuation of scrap generated during production as reflected in the company's normal books and records; anomalies in CBA's reported scrap offset and material costs; CBA's methodology for reporting conversion cost; how the reported costs account for differences in the physical characteristics among products; alleged errors in the company's audited financial statements; affiliated purchases; idled assets; and, electricity purchases, thereby preventing Commerce from understanding CBA's submitted cost information. Moreover, we preliminary find that CBA impeded the investigation by failing to address Commerce's questions regarding

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).

³² See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors from Taiwan*).

³³ See section 776(b)(1)(B) of the Act.

³⁴ See Memorandum, "Companhia Brasileira De Alumínio Cost of Production and Constructed Value: Failure to Act to the Best of its Ability," dated concurrently with this memorandum (CBA COP/CV AFA Memo). As the analysis of this preliminary finding necessarily involves a discussion of business proprietary information, the instant discussion provides a summary regarding the basis for this finding. Please refer to the CBA COP/CV AFA Memo for a fulsome discussion of this issue.

³⁵ See CBA's 2nd SDQR for the relevant exhibits.

the nonsensical costs reported in CBA's cost database. For these reasons, we are unable to discern that the costs reported by CBA reasonably reflect the costs associated with the production of aluminum sheet in accordance with section 773(f)(1)(a) of the Act. Accordingly, we preliminarily determine that the use of facts otherwise available is warranted, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.

C. Use of Adverse Inferences

CBA

Based on the deficiencies discussed in CBA COP/CV AFA Memo and summarized above, which CBA failed to cure despite being given an opportunity to do so, we conclude that CBA has not acted to the best of its ability to comply with Commerce's requests for information. Therefore, Commerce preliminarily finds that CBA failed to cooperate to the best of its ability, and thus, an adverse inference is warranted in selecting from among the facts otherwise available in accordance with section 776(b) of the Act and 19 CFR 351.308.

D. Selection of the AFA Rate and Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that 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.³⁶ 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."³⁷ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.³⁸ 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.³⁹

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.⁴⁰ 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.⁴¹

³⁶ See 19 CFR 351.308(d).

³⁷ See SAA at 870.

³⁸ See SAA at 870; and 19 CFR 351.308(d).

³⁹ *Id.*

⁴⁰ See section 776(d)(3) of the Act.

⁴¹ 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.

With respect to the AFA rate applied to CBA, we find it is most appropriate to apply the highest transaction-specific margin of the sole cooperative mandatory respondent, Novelis Brasil, for the preliminary determination. Applying the highest transaction-specific margin of a cooperative respondent as a non-cooperative respondent's AFA rate is consistent with our approach in similar circumstances, and has been sustained by the Court of Appeals for the Federal Circuit (CAFC).⁴² Our normal method for determining the AFA rate would result in applying Novelis Brasil's weighted-average dumping margin to CBA as AFA. However, using our usual method here is not only insufficient to induce cooperation, it is also unfair to Novelis Brasil, because Novelis Brasil cooperated fully with Commerce in this investigation. Further, we find that the highest petition rate of 27.01 is insufficiently adverse to induce cooperation. The SAA explains that where a respondent has failed to cooperate under section 776(b) of the Act, Commerce is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully," and that one factor that Commerce may consider in selecting adverse facts available is "the extent to which a party may benefit from its own lack of cooperation."⁴³ In considering this factor, we find that applying the petition rate as CBA's total AFA rate would in fact reward CBA for being uncooperative, because that rate is lower than fully cooperative respondent Novelis Brasil's calculated margin. We find that relying on Novelis Brasil's highest transaction-specific margin as CBA's AFA rate strikes an appropriate balance between the goal of inducing future cooperation by CBA, and the rate not being punitive. The transaction-specific margin selected does not involve an aberrational sale in terms of the type of product or quantity sold. The transaction-specific margin is also within the mainstream of Novelis Brasil's other calculated rates. Therefore, Commerce has preliminarily applied Novelis Brasil's highest transaction-specific margin of 131.53 percent to CBA as AFA. Because this rate is based on information that Novelis Brasil provided in this investigation, it is not secondary information within the meaning of section 776(c) of the Act; thus, Commerce need not corroborate this rate.

VII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

To determine whether sales of aluminum sheet from Brazil to the United States were made at LFTV, we compared the export price (EP) and constructed export price (CEP) 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 NV to weighted-average EP or CEP, *i.e.*, the average-to-average method, unless the Secretary 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

⁴² See *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comment 9; and *Nan Ya Plastics Corp., Ltd. v. United States*, 810 F. 3d 1333, 1345-46 (CAFC 2016).

⁴³ See SAA at 870.

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.⁴⁴ 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.

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

⁴⁴ 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); *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).

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.⁴⁵

2. Results of the Differential Pricing Analysis

For Novelis Brasil, based on the results of the differential pricing analysis, Commerce preliminarily finds that 86.52 percent of the value of U.S. sales pass the Cohen's *d* test,

⁴⁵ The CAFC in *Apex Frozen Foods v. United States*, 16-1789 (CAFC 2017) affirmed much of Commerce's differential pricing methodology. We ask interested that parties present only arguments on issues which have not already been decided by the CAFC.

confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminary determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, we preliminary determine to apply average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Novelis Brasil.

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.⁴⁶ 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 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.⁴⁷ We instructed Novelis Brasil to use these product characteristics in response to the AD questionnaire issued in this investigation.⁴⁸

In accordance with section 771(16) of the Act, we considered all products produced and sold by Novelis Brasil in Brazil 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, where appropriate. Where there were no sales of identical or similar merchandise sold in the home market in the ordinary course of trade to compare to U.S. sales, we made comparisons based on constructed value (CV).

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.⁴⁹ 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.⁵⁰

⁴⁶ See *Initiation Notice*, 85 FR at 19445.

⁴⁷ See Final Product Characteristics Letter.

⁴⁸ *Id.*

⁴⁹ See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁵⁰ 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).

Novelis Brasil reported the invoice date as the date of sale for both its home market and U.S. sales.⁵¹ An analysis of Novelis Brasil's home market sales database corroborated Novelis Brasil's claim that the invoice date always matched with the reported shipment date. Further, in examining Novelis Brasil's U.S. sales database, we found that while EP shipment dates always matched with the invoice date, certain CEP shipment dates occurred one day prior to the invoice date.⁵² Therefore, consistent with 19 CFR 351.401(i) and Commerce's practice, we preliminarily determine that the invoice date is the most appropriate date of sale for all sales in the home market, all EP sales and certain CEP sales in the U.S market. Further, we find that the earlier of invoice date and shipment date is the appropriate date of sale for certain CEP sales described above.

D. Export Price and Constructed 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 (c)."

Section 772(b) of the Act defines CEP as "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 producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)."

Novelis Brasil reported both EP and CEP sales in its U.S. sales database.⁵³ We calculated EP based on the price that Novelis Brasil charged to the first unaffiliated purchaser in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments, movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, foreign insurance, domestic warehousing, certain delayed shipping fees incurred, international freight, marine insurance, U.S. inland freight, other U.S. transportation expenses (*i.e.*, U.S. customs processing fees, and U.S. harbor maintenance fees), and section 232 duties (as appropriate) in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(b) of the Act, we used CEP for certain of Novelis Brasil's sales because the sales were made on its behalf by its U.S. sales affiliate in the United States, *i.e.*, Novelis Corporation, to unaffiliated purchasers in the United States.

For these sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made additions to the starting price for packing in accordance with section 772(c)(1)(A) of the Act. We made deductions from the U.S. sales price for billing adjustments and movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included, where applicable, foreign inland freight, foreign brokerage and handling, foreign insurance, domestic warehousing, certain delayed shipping fees incurred, U.S. brokerage and

⁵¹ See Novelis Brasil's BQR at 26; and Novelis Brasil's CQR at 23.

⁵² See Novelis Brasil's SAQR at 10-11; and Novelis Brasil's SBCQR at 16-17.

⁵³ See Novelis Brasil's 3rd SQR and the accompanying sales database.

handling, international freight, marine insurance, U.S warehousing, and U.S. inland freight, U.S. customs duties and fees which includes section 232 duties.

E. 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 Novelis Brasil 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 Novelis Brasil's home market of Brazil is viable. Therefore, we used home market sales in Brazil as the basis for NV for Novelis Brasil in accordance with section 773(a)(1)(A) and (B) of the Act.

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).⁵⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁵ 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,⁵⁶ 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.⁵⁷

⁵⁴ See 19 CFR 351.412(c)(2).

⁵⁵ *Id.*; and *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.

⁵⁶ 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 expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁵⁷ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (CAFC 2001).

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 a 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.⁵⁸

In this investigation, we obtained information from Novelis Brasil 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.⁵⁹ Our LOT findings are summarized below.

Novelis Brasil

In the home market, Novelis Brasil reported that it made sales through one channel of distribution, *i.e.*, direct sales to customers.⁶⁰ 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 Novelis Brasil's selling functions chart, we find that Novelis Brasil performed technical support, logistical services, and sales-related administrative activities for all home market sales.

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Because there is one channel of distribution in the home market, and Novelis Brasil performs the same selling functions for all of its home market sales, we preliminarily determine that there is one LOT in the home market for Novelis Brasil.

With respect to the U.S. market, Novelis Brasil reported that it made EP sales through the same single channel of distribution as discussed above for the home market, *i.e.*, direct sales to customers.⁶¹ Novelis Brasil also reported CEP sales where its U.S. affiliate, Novelis Corporation, sold the subject merchandise to its unaffiliated customers in the United States either through long-term contracts or spot sales.⁶² Selling functions performed by either Novelis Brasil or Novelis Corporation for EP and CEP sales, respectively, include logistical services, sales-related administrative activities, and technical support.⁶³

⁵⁸ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁵⁹ See CBA's AQR at 15; see also Novelis Brasil's AQR at 17; and Novelis Brasil's SAQR at Exhibit SA-1.

⁶⁰ *Id.*; and Novelis Brasil's SBCQR at Attachment 1.

⁶¹ See Novelis Brasil's AQR at 17; and Novelis Brasil's SAQR at Exhibit SA-1.

⁶² See Novelis Brasil's AQR at 18.

⁶³ *Id.*

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Novelis Brasil performed for its U.S. and home market customers are mostly identical.⁶⁴ Specifically, Novelis Brasil performed the same selling functions in the home market, which are grouped in one LOT, as it performed in the U.S. market, which are also grouped in one LOT.⁶⁵ 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 cost of production (COP) information from Novelis Brasil. We examined Novelis Brasil's 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 Novelis Brasil'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 Novelis Brasil. We revised Novelis Brasil's G&A expense ratio to include certain other income and expense items included in other expenses net on Novelis Brasil's audited financial statement for the year ended December 31, 2019.

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 any applicable billing adjustments, 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

⁶⁴ *Id.*

⁶⁵ *Id.*

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 Novelis Brasil’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.

F. Calculation of NV Based on Comparison-Market Prices

We calculated NV for Novelis Brasil based on prices to unaffiliated customers. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland freight, foreign warehousing, and insurance. 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 (*i.e.*, late payments, warranty payments, and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses, warranty expenses), where appropriate.⁶⁶

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.⁶⁷ 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.

VIII. 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.

⁶⁶ Novelis Brasil did not offer commissions on sales of subject merchandise in either the U.S. or home markets. *See, e.g.*, Novelis Brasil’s BQR at 41; and Novelis Brasil’s CQR at 45.

⁶⁷ *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.

IX. 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