



A-475-836
Investigation
Public Document
E&C Office VI: VC

October 24, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less Than Fair Value Investigation of Carbon and Alloy Steel
Wire Rod from Italy

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that carbon and alloy steel wire rod (wire rod) from Italy 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 28, 2017, the Department received an antidumping duty (AD) petition covering imports of wire rod from Italy,¹ which was filed in proper form by Gerdau Ameristeel US Inc.,

¹ See Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom - Petitions for the Imposition of Antidumping and Countervailing Duties, dated March 28, 2017 (the Petition).

Nucor Corporation, Keystone Consolidated Industries, Inc., and Charter Steel (collectively, the petitioners). The Department initiated this investigation on April 17, 2017.²

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on April 26, 2017, the Department 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 May 3, 2017, we received comments on behalf of Nucor Corporation regarding the respondent selection process.⁵ On May 22, 2017, the Department selected for individual examination to the two largest publicly identifiable producers/exporters of the merchandise under consideration by volume, Ferriere Nord S.p.A. (Ferriere Nord) and Ferriera Valsider S.p.A. (Ferriera Valsider).⁶

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the appropriate physical characteristics of wire rod to be reported in response to the Department's AD questionnaire.⁷ Between May 10, 2017, and May 12, 2017, the petitioners and various other interested parties in this investigation, and the companion AD investigations for Belarus, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. Between May 15, 2017, and June 13, 2017, the petitioners and various other interested parties filed rebuttal comments. Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.⁸

On May 12, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire rod from Italy.⁹

² See *Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 82 FR19207 (April 20, 2017) (*Initiation Notice*).

³ See *Initiation Notice* at 19211.

⁴ See Memorandum to All Interested Parties, dated April 26, 2017 (Customs Data).

⁵ See Letter to the Secretary of Commerce from Nucor, entitled, "Carbon and Alloy Steel Wire Rod from Italy: Respondent Selection Comments," dated May 3, 2017.

⁶ See Memorandum entitled, "Respondent Selection for the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy," dated May 22, 2017 (Respondent Selection Memo).

⁷ See *Initiation Notice* at 19207, 19208.

⁸ See Memorandum to the File, entitled, "Antidumping Duty Investigations of Emulsion Styrene-Butadiene Rubber from Mexico, Brazil, Poland and the Republic of Korea: Product Characteristics for Sections B-D Questionnaire," dated September 27, 2016.

⁹ See Letter from the ITC, dated May 19, 2017 (ITC Preliminary Affirmative Injury Determination).

The Department issued its AD questionnaire to Ferriere Nord and Ferriera Valsider on May 24, 2017.¹⁰ Ferriera Valsider did not submit its Section A response prior to the Department's deadline for its submission on June 14, 2017, and did not request an extension of the deadline. Between June 2017 and August 2017, Ferriere Nord timely responded to the Department's original and supplemental questionnaires. On August 21, 2017, we postponed the preliminary determination until October 24, 2017.¹¹

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2017.¹²

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,¹³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.¹⁴ Certain interested parties from the companion wire rod investigations commented on the scope of the wire rod investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.¹⁵ We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.¹⁶ In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties, and since the issuance of the Preliminary Scope Decision Memorandum, certain parties submitted scope case briefs or scope rebuttal briefs.¹⁷ We will issue a final scope decision on the records of the wire rod investigations after considering the comments submitted in the scope case and rebuttal briefs.

¹⁰ See Letters to Ferriere Nord and Ferriera Valsider regarding the AD questionnaire, dated May 24, 2017.

¹¹ See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 39564 (August 21, 2017).

¹² See 19 CFR 351.204(b)(1).

¹³ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁴ See *Initiation Notice* at 19207-08.

¹⁵ For further discussion of these comments, *see* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 7, 2017 (Preliminary Scope Decision Memorandum).

¹⁶ *Id.*

¹⁷ See Letter from POSCO dated September 6, 2017, entitled "Scope Issues Case Brief," Letter from British Steel Limited dated September 6, 2017, entitled "British Steel's Scope Case Brief," and Letter from petitioners dated September 13, 2017, entitled "Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO."

V. AFFILIATION AND COLLAPSING

Section 771(33)(E) of the Act, in pertinent part, identifies persons that shall be considered “affiliated” or “affiliated persons” as: any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization. Section 771(33)(F) of the Act further provides that persons shall be considered affiliated when there are two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.¹⁸ Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) notes that control may be found to exist within corporate groupings.¹⁹ The Department’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁰

Ferriere Nord

For the reasons set forth in the proprietary Preliminary Affiliation Memorandum, which we incorporate by reference, we preliminarily determine that Ferriere Nord, Acciaierie di Verona SpA (AdV), SIAT S.p.A. (SIAT), and La Veneta Reti srL (LVR) are affiliated pursuant to section 771(33)(E) and (G) of the Act because these four companies are majority owned and controlled by FIN. FER. S.p.A., a holding company, and members of a family.²¹

The Department relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity pursuant to 19 CFR 351.401(f). Pursuant to that regulation, the Department will treat two or more affiliated producers as a single entity (*i.e.*, collapse them) where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and the Department also concludes that there is a significant potential for the manipulation of price or production.²² In this case, we have sufficient information to find that Ferriere Nord and AdV are affiliated.²³ We further find that Ferriere Nord and AdV have production facilities for similar or identical products that would not require substantial retooling of either manufacturing facility in order to restructure manufacturing priorities. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between Ferriere Nord and AdV

¹⁸ See section 771(33)(F) of the Act.

¹⁹ See SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

²⁰ See also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27298 (May 19, 1997).

²¹ For further discussion of this issue, see Memorandum entitled, “Certain Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord S.p.A. and Acciaierie di Verona S.p.A. Affiliation and Collapsing Memorandum” (Ferriere Nord Prelim Affiliation and Collapsing Memo), dated concurrently with this preliminary determination.

²² See 19 CFR 351.401(f).

²³ See Ferriere Nord and AdV Prelim Affiliation and Collapsing Memo.

because of: 1) level of common ownership; 2) overlapping management; and 3) intertwined operations.²⁴ Thus, in accordance with 19 CFR 351.401(f) and the Department's practice,²⁵ we are treating Ferriere Nord and AdV as a single entity for the purposes of this preliminary determination.²⁶

VI. DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Ferriere Nord's sales of subject merchandise were made in the United States at LTFV, the Department compared the export price (EP), as appropriate, to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A) Determination of the Comparison Method

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

In recent investigations, the Department 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.²⁷ The Department 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. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department 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

²⁴ See Ferriere Nord and AdV Prelim Affiliation and Collapsing Memo.

²⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007), and accompanying Issues and Decision Memorandum; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010), and accompanying Issues and Decision Memorandum.

²⁶ See Ferriere Nord and AdV Prelim Affiliation and Collapsing Memo.

²⁷ 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).

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 the Department 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 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 accounts 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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department 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.²⁸

B) *Results of the Differential Pricing Analysis*

For Ferriere Nord, based on the results of the differential pricing analysis, the Department finds that 57.24 percent of the value of U.S. sales pass the Cohen's *d* test,²⁹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that the average-to-average method can account for such differences because the relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method (*i.e.*, the average-to-transaction mixed alternative method) is not 25 percent or greater. Thus, for these preliminary results, the Department is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Ferriere Nord.

VII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is

²⁸ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. July 12, 2017) recently affirmed much of the Department's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

²⁹ See the Memorandum to the File, entitled, "Analysis for the Preliminary Determination of the Less Than Fair Value Investigation of Carbon and Alloy Steel Wire Rod from Italy," dated concurrently with this memorandum (Ferriere Nord's Preliminary Analysis Memorandum).

satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁰

Ferriere Nord reported, as the date of sale, the earlier of invoice date or shipment date for all home market and U.S. sales.³¹ For its home market and U.S. sales, Ferriere Nord reported that material terms of sale can change up to the point of shipment date.³² Accordingly, we used the earlier of invoice date or shipment date as the date of sale for Ferriere Nord for the purposes of this preliminary determination.

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by Ferriere Nord in Italy 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 merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristic reported by Ferriere Nord. For Ferriere Nord’s sales of wire rod in the United States, the reported control number (CONNUM) identifies the characteristics of wire rod, as exported by Ferriere Nord.

IX. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for certain of Ferriere Nord’s U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation, and constructed export price (CEP) methodology was not otherwise warranted based on the facts of the record.

Ferriere Nord made only EP sales. For those sales, the Department calculated EP based on a packed price to the first unaffiliated purchaser in the United States. The Department made adjustments for credit expenses, indirect selling expenses incurred in the country of manufacture, and inventory carrying costs in the country of manufacture, as appropriate. The Department also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, and foreign brokerage and handling.³³

³⁰ *Id.*

³¹ See Ferriere Nord’s July 7, 2017, Section B Response at 25 (Section B Response); Ferriere Nord’s July 7, 2017, Section C Response at 21 (Section C Response); August 2, 2017, Supplemental Section A Response at 1-2.

³² *Id.*

³³ See Ferriere Nord’s Preliminary Analysis Memorandum.

X. NORMAL VALUE

A) 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 determined that the aggregate volume of home market sales of the foreign like product for Ferriere Nord was greater than five percent of the aggregate volume of its U.S. sales of merchandise under consideration. Therefore, we used home market sales as the basis for NV for Ferriere Nord, in accordance with section 773(a)(1)(B) of the Act.

B) Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department 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).³⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁵ 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),³⁶ we consider the starting prices before any adjustments. When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP 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. In this investigation, we obtained information from Ferriere Nord regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling

³⁴ See 19 CFR 351.412(c)(2).

³⁵ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

³⁶ 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).

activities performed for each channel of distribution.³⁷ Our LOT findings are summarized below.

In the home market, Ferriere Nord reported that all of its sales were made through two channels of distribution (*i.e.*, to affiliated end users or to unaffiliated end users).³⁸ In the U.S. market, Ferriere Nord reported that all of its sales were made through one channel of distribution (*i.e.*, unaffiliated trading company).³⁹ In the home market, Ferriere Nord's selling activities can be grouped into four selling function categories for analysis: 1) sales forecasting, strategic, and economic planning; 2) direct sales personnel; 3) technical assistance; 4) quality testing; and 5) freight and delivery.⁴⁰ Based on these selling function categories, we find that there were no significant differences in selling activities performed by Ferriere Nord to sell to its home market customers, regardless of whether the home market customer was affiliated or unaffiliated with Ferriere Nord. Thus, we preliminarily determine that there is one LOT in the home market for Ferriere Nord.⁴¹

With respect to the U.S. market, Ferriere Nord only made EP sales. For EP sales, Ferriere Nord sold merchandise through one channel of distribution, *i.e.*, sales directly to an unaffiliated U.S. trading company.⁴² For its EP sales, Ferriere Nord reported that it performed the following selling functions: 1) sales forecasting, strategic, and economic planning; 2) direct sales personnel; 3) quality testing; and 4) freight and delivery.⁴³

The Department compared the U.S. LOT to the home market LOTs, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly (*i.e.*, Ferriere Nord reported that it provided technical assistance in the home market, but not in the U.S. market). The Department preliminarily finds that sales to the home market during the POI were not made at a more advanced LOT than sales in the U.S. LOT. We did not make a LOT adjustment under 19 CFR 351.412(e), because Ferriere Nord did sell the merchandise under consideration at a common LOT in the home market and U.S. markets and, thus, we were unable to identify a pattern of consistent price differences attributable to differences in LOTs.

C) *Cost of Production (COP) Analysis*

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁴⁴ Accordingly, the Department requested this information from Ferriere Nord in this investigation. We examined

³⁷ See Ferriere Nord's Section A Response at 15-16 and exhibit A-8.

³⁸ *Id.* at 14 and exhibit A-7.

³⁹ *Id.*

⁴⁰ *Id.* at 15-16 and exhibit A-8.

⁴¹ *Id.* at exhibit A-8.

⁴² *Id.* at 14 and exhibit A-7.

⁴³ *Id.* at 15-16 and exhibit A-7.

⁴⁴ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015) (*Applicability Notice*).

their cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.

We relied on the COP data submitted by Ferriere Nord except as follows:

- We adjusted Ferriere Nord's general and administrative expense rate, as reported in the original section D questionnaire response, in order to ensure that it is based on the corrected expense amounts, reported in the July 21, 2017, supplemental D questionnaire response.
- We included net exchange gains and losses in the numerator of Ferriere Nord's financial expense rate calculation.⁴⁵

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act of the Act, we compared the adjusted 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 discounts, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

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

⁴⁵ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated October 24, 2017.

We found that, for certain products, more than 20 percent of Ferriere Nord'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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) Calculation of NV Based on Comparison-Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Ferriere Nord, we based NV on comparison market prices. We calculated NV based on delivered prices to unaffiliated customers. We also made deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act.

We deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses.⁴⁶

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, the Department also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.⁴⁷

XI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

Adverse Facts Available

For the reasons discussed below, we determine that the use of total adverse facts available (AFA) is appropriate for this preliminary determination with respect to Ferriera Valsider. Because we are preliminarily applying a margin based on AFA to Ferriera Valsider, we have not discussed that company with regard to our normal antidumping duty calculation methodology in the remainder of this memorandum.

A) Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (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, then the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability

⁴⁶ See Ferriere Nord's Preliminary Analysis Memorandum.

⁴⁷ See 19 CFR 351.411(b).

of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Ferriera Valsider did not respond to our original questionnaire. As a result, we preliminarily find that the necessary information to calculate an antidumping duty margin for Ferriera Valsider is not available on the record of this investigation, that Ferriera Valsider withheld information the Department requested, that Ferriera Valsider failed to provide information by the specified deadlines, and that Ferriera Valsider significantly impeded the proceeding. Moreover, because Ferriera Valsider failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Ferriera Valsider's preliminary dumping margin.

B) *Use of Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may apply an inference adverse to the interests of that party in selecting the facts otherwise available.⁴⁸ In so doing, and under the TPEA,⁴⁹ the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁵⁰ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁵¹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁵² It is the Department's practice to consider, in employing adverse

⁴⁸ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁴⁹ As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

⁵⁰ See section 776(b)(1)(B) of the Act.

⁵¹ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁵² See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

inferences, the extent to which a party may benefit from its own lack of cooperation.⁵³

We preliminarily find that Ferriera Valsider has not acted to the best of its ability to comply with the Department's request for information. Ferriera Valsider failed to respond to the Department's questionnaire. The failure of Ferriera Valsider to participate in this investigation and respond to the Department's questionnaire has precluded the Department from performing the necessary analysis to calculate weighted-average dumping margins for it based on its own data. Accordingly, the Department concludes that Ferriera Valsider failed to cooperate to the best of its ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁵⁴

C) *Selection and Corroboration of the AFA Rate*

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁵⁵ In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁵⁶ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁵⁷

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁵⁸ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has

⁵³ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁵⁴ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁵⁵ See also 19 CFR 351.308(c).

⁵⁶ See SAA, at 870.

⁵⁷ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁸ See SAA, at 870.

probative value.⁵⁹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.⁶⁰ Further, under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁶¹

With respect to the investigation covering wire rod from Italy, the highest dumping margin calculated for merchandise under consideration from Italy is 22.06 percent for Ferriere Nord.⁶² To determine the appropriate AFA rate, the Department first examined whether the petition margin was less than or equal to the highest calculated margin. The petition reported an antidumping duty margin of 18.89 percent. In addition, we have calculated a 22.06 percent margin for Ferriere Nord based on the methodology described elsewhere in this memorandum. We are applying, as AFA, the 22.06 percent margin to Ferriere Valsider as the higher of the two available margins (the petition margin and the calculated margin). Because this rate was a calculated rate, based on a mandatory respondent’s data in this segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it under section 776(c)(2) of the Act. Thus, for the preliminary determination, as adverse facts available, we have assigned Ferriera Valsider a dumping margin of 22.06 percent, which is the highest calculated rate.

XII. 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.

⁵⁹ *Id.*; see also 19 CFR 351.308(d).

⁶⁰ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁶¹ See sections 776(d)(3)(A) and (B) of the Act.

⁶² See *Initiation Notice* at 19210; see also AD Investigation Initiation Checklist: Certain Carbon and Alloy Steel Wire Rod from Italy (April 17, 2017).

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree

10/24/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance