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Investigation
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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 and
Affirmative Determination of Critical Circumstances, in Part, in
the Less-Than-Fair-Value Investigation of Cold-Drawn
Mechanical Tubing of Carbon and Alloy Steel from Italy

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) 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 Department also preliminarily determines that critical circumstances exist for Dalmine S.P.A. (Dalmine) and Metalfer S.P.A. (Metalfer). The Department preliminarily determines that critical circumstances do not exist for all-other exporters/producers of cold-drawn mechanical tubing. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On April 19, 2017, the Department received antidumping duty (AD) petitions covering imports of cold-drawn mechanical tubing from Italy,¹ which were filed in proper form on behalf of ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co. USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners). The Department initiated this investigation on May 9, 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 May 11, 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 23, 2017, we received comments from the petitioners in this investigation.⁵ No other interested party submitted comments. On June 9, 2017, the Department limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the subject merchandise by volume, Dalmine and Metalfer,⁶ and issued the AD questionnaire to them.⁷

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of cold-drawn mechanical tubing to be reported in response to the Department's AD questionnaire.⁸ The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion cold-drawn mechanical tubing investigations involving Germany, India, the Republic of Korea, the People's Republic of China, and Switzerland.⁹ On June 9, 2017, the petitioners and various other interested parties in this and/or the companion AD

¹ See Petitioners' Letter, Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland - Petitions for the Imposition of Antidumping and Countervailing Duties, dated April 19, 2017 (the Petition). Plymouth Tube Co. USA, a domestic producer of subject merchandise, joined these investigations as a domestic interested party after the filing of the Petition.

² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

³ *Id.* at 22495.

⁴ See Department Letter re: U.S. Customs and Border Protection Import Data for Use in Respondent Selection, dated May 11, 2017.

⁵ See Petitioners' Letter, "Petitioners' Comments on Respondent Selection," dated May 23, 2017.

⁶ See Memorandum, "Selection of Respondents for the Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy," dated June 9, 2017.

⁷ See Department Letter re: Antidumping Duty Questionnaire, dated June 9, 2017.

⁸ See *Initiation Notice* at 22491.

⁹ For further discussion of these comments, see Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Germany, India, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with this Memorandum (Preliminary Scope Memorandum).

investigations submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.¹⁰ On June 19, 2017, the petitioners and various other interested parties filed rebuttal comments.¹¹ Based on the comments received, the Department issued a letter to interested parties which contained the initial product characteristics for this and the companion AD investigations.¹² On July 12, 2017, the petitioners submitted comments on the product characteristics released by the Department.¹³ Based on the comments received, on August 7, 2017, the Department issued a memorandum to interested parties which contained the revised product characteristics for this investigation.¹⁴

On June 9, 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 cold-drawn mechanical tubing from Italy.¹⁵

From July 2017 through November 2017, we issued supplemental questionnaires to Dalmine and Metalfer. We received responses to these supplemental questionnaires from July 2017 through November 2017.¹⁶

On September 1, 2017, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).¹⁷ Thereafter, pursuant to section 733(c)(1)(A) of the Act, the Department published in the *Federal Register* a postponement of the preliminary determination until no later than November 15, 2017.¹⁸

On October 23, 2017, the petitioners filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. In this same month, the Department requested shipment data from Dalmine and Metalfer with respect to the critical circumstances allegation. On

¹⁰ See Petitioners' Letter, "Petitioners' Comments on Physical Characteristics and Model Matching Criteria," dated June 9, 2017; Dalmine's Letter, "Product Characteristic Comments," dated June 9, 2017; Tube Investments of India Ltd.'s Letter, "Comments on Product Characteristics," dated June 9, 2017.

¹¹ See, e.g., Petitioners' Letter, "Petitioners' Rebuttal to Respondents' Product Matching Comments," dated June 19, 2017; Mubea Inc.'s Letter, "Rebuttal Comments on Product Characteristics," dated June 19, 2017.

¹² See Department Letter, re: Certain Cold-drawn Mechanical Tubing of Carbon and Alloy Steel from Italy, dated July 3, 2017.

¹³ See Petitioners' Letter, "Petitioners' Comments on the Department's Release of Product Matching Criteria and Request for Expansion of Certain Criteria Fields," dated July 12, 2017.

¹⁴ See Memorandum regarding: Revised Product Characteristics, dated August 7, 2017.

¹⁵ See *Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland; Determinations*, 82 FR 26812 (June 9, 2017).

¹⁶ See e.g., Dalmine's August 7, 2017 Supplemental Questionnaire Response (Dalmine August 7, 2017 SQR); Metalfer's July 26, 2017 Supplemental Questionnaire Response (Metalfer July 26, 2017 SQR).

¹⁷ See Petitioners' Letter, "Cold Drawn Mechanical Tubing from China, Germany, India, Italy, Korea and Switzerland – Petitioners' Request to Postpone the Antidumping Duty Preliminary Determination," dated September 1, 2017.

¹⁸ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 42788 (September 12, 2017).

October 30, 2017, Dalmine and Metalfer responded to the Department's request for shipment data.¹⁹

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

III. PERIOD OF INVESTIGATION

The Period of Investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2017.²⁰

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,²¹ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²² Certain interested parties from the companion cold-drawn mechanical tubing investigations commented on the scope of this investigation, 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.²³ We have evaluated the scope comments filed by the interested parties, and we are preliminarily modifying the scope language as it appeared in the *Initiation Notice*.²⁴ In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties. We will issue a final scope decision on the records of the cold-drawn mechanical tubing investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. 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 Dalmine's or Metalfer's sales of subject merchandise were made from Italy to the United States at LTFV, the Department compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

¹⁹ See Dalmine's Letter "Response to Request for Quantity and Value Data," dated October 30, 2017; Metalfer's Letter "Metalfer's Monthly Quantity and Value Data for Shipment to the United States for October 2016 through September 2017," dated October 30, 2017.

²⁰ See 19 CFR 351.204(b)(1).

²¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

²² See *Initiation Notice*, 82 FR at 22491-92.

²³ See Preliminary Scope Decision Memorandum.

²⁴ *Id.*

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.²⁵ 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 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

²⁵ 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).

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.²⁶

B) Results of the Differential Pricing Analysis

Dalmine

For Dalmine, based on the results of the differential pricing analysis, the Department preliminarily finds that 48.36 percent of the value of U.S. sales pass the Cohen's *d* test,²⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Dalmine.

Metalfer

For Metalfer, based on the results of the differential pricing analysis, the Department preliminarily finds that 54.38 percent of the value of U.S. sales pass the Cohen's *d* test,²⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Metalfer.

²⁶ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (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.

²⁷ See Memorandum, "Analysis for the Preliminary Determination of the Less Than Fair Value Investigation of Certain Cold-drawn Mechanical Tubing from Italy: Metalfer S.P.A.," dated concurrently with this memorandum (Metalfer Preliminary Analysis Memorandum) at 2-3.

²⁸ See Memorandum, "Analysis for the Preliminary Determination of the Less Than Fair Value Investigation of Certain Cold-drawn Mechanical Tubing from Italy: Metalfer S.P.A.," dated concurrently with this memorandum (Metalfer Preliminary Analysis Memorandum) at 2-3.

VI. 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 satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁹ Finally, the Department 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.³⁰

Dalmine

Dalmine reported that the date of shipment preceded the date of invoice for all home market sales during the POI, and that the material terms of sale (*i.e.*, quantity, gross unit price, total value, and sales terms) did not change between the date of shipment and the date of invoice.³¹ As such, the Department used the shipment date as the date of sale for Dalmine's home market sales, as reported. Dalmine reported the earlier of shipment date or invoice date as the date of sale for all U.S. sales, and further reported that the material terms of sale did not change after that initial date.³² As such, the Department used the earlier of the shipment date or invoice date for Dalmine's U.S. sales, as reported.

Metalfer

For both its home market sales and U.S. sales, Metalfer stated in its narrative response that it considers the invoice date to be the date of sale in its normal course of business.³³ However, Metalfer reported the earlier of the shipment date or invoice date as the date of sale, and further reported that the material terms of sale did not change after that initial date.³⁴ As such, the Department used the earlier of the shipment date or invoice date for Metalfer's U.S. sales, as reported.

VII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by Dalmine and Metalfer 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

²⁹ *Id.*

³⁰ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

³¹ See Dalmine's October 10, 2017 Supplemental Questionnaire Response (Dalmine's October 10, 2017 SQR) at 15.

³² See Dalmine's August 16, 2017 Section C Questionnaire Response (Dalmine August 16, 2017 CQR) at 25.

³³ See Metalfer's June 30, 2017, Section A Questionnaire Response at 15 (Metalfer June 30, 2017 AQR).

³⁴ See Metalfer's October 27, 2017 Supplemental Questionnaire Response (Metalfer October 27, 2017 SQR) at 20.

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 the respondents in the following order of importance: tube form, type of cold finishing process, steel grade, outside diameter, wall thickness, heat treatment, plating, painting, length, and surface finish. For the respondents' sales of cold-drawn mechanical tubing in the United States, the reported control number (CONNUM) identifies the characteristics of cold-drawn mechanical tubing, as exported by Dalmine and Metalfer, respectively.

VIII. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for Metalfer's and certain of Dalmine's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for the remainder of Dalmine's U.S. sales, we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Dalmine, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

Dalmine

For Dalmine's EP 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, other direct selling 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, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight.³⁵

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For purposes of this investigation, Dalmine classified some of its sales of cold-drawn mechanical tubing to the United States as CEP sales. Dalmine reported that it sold the merchandise under consideration to its affiliated U.S. importer, Tenaris Global Services U.S.A. (Tenaris USA).³⁶

³⁵ See Dalmine Preliminary Analysis Memorandum at 9-14.

³⁶ See Dalmine's July 7, 2017 Section A Questionnaire Response at A-1 (Dalmine July 7, 2017 AQR).

Further, the Department concluded that for these sales, EP was not otherwise warranted. The Department calculated CEP based on packed, delivered prices to unaffiliated purchasers in the United States.

The Department adjusted these prices for movement expenses, including foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, warehousing, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, the Department also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (credit expenses and other direct selling expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Dalmine on its sales of subject merchandise in the United States and the profit associated with those sales.³⁷

Metalfer

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for movement expenses, including foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine and inland insurance, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act.³⁸

IX. NORMAL VALUE

A) Home 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 Dalmine and Metalfer 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 Dalmine and Metalfer, in accordance with section 773(a)(1)(B) of the Act.

³⁷ See Dalmine Preliminary Analysis Memorandum at 9-14.

³⁸ See Metalfer Preliminary Analysis Memorandum at 9-10.

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).³⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁰ 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),⁴¹ 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.⁴² When the Department is unable to match 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. 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), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴³

In this investigation, we obtained information from Dalmine and Metalfer regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁴⁴ Our LOT findings are summarized below.

³⁹ See 19 CFR 351.412(c)(2).

⁴⁰ *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*).

⁴¹ Where NV is based on constructed value (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).

⁴² See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁴³ See, e.g., *OJ from Brazil* at Comment 7.

⁴⁴ See Dalmine July 7, 2017 AQR at A-13-A-17 and Exhibit A5; Dalmine August 7, 2017 SQR at 7-16; Dalmine's September 11, 2017 Supplemental Questionnaire Response at 2-3 (Dalmine September 11, 2017 SQR); Metalfer June 30, 2017 AQR at 10-15 and Exhibit A-7; Metalfer July 26, 2017 SQR at 15-18 and Exhibit SA-7; Metalfer October 27, 2017 SQR at 18.

Dalmine

In the home market, Dalmine reported that all of its sales were made through two channels of distribution (*i.e.*, to unaffiliated distributors or to unaffiliated end users).⁴⁵ According to Dalmine, there were minor differences in the sales process or its selling functions for sales made through either channel.⁴⁶ Dalmine ranked its selling functions by intensity levels of none, low, medium, and high, but was unable to support the method by which it quantified these levels.⁴⁷ Further, Dalmine stated that while selling functions made at the low and medium levels are not done on a regular basis and only in response to customer requests, it did not support its assertion that selling functions performed at a medium level were at a higher level because customers more frequently requested these services.⁴⁸

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Dalmine performed sales and marketing, freight and delivery services, inventory maintenance, and technical support services for its home market sales, but did not provide warranty services or warehousing for its home market sales. When comparing the net difference in selling activities across channels, we find there were no significant differences in selling activities performed by Dalmine to sell to its home market customers, and further, any reported differences were not supported by quantifiable evidence on the record. Thus, we preliminarily determine that there is one LOT in the home market for Dalmine.⁴⁹

With respect to the U.S. market, Dalmine made EP and CEP sales. For EP sales, Dalmine reported that it sold merchandise through one channel of distribution.⁵⁰ For CEP sales, Dalmine reported that it sold the merchandise through two channels of distribution: 1) Dalmine shipped merchandise to unaffiliated end users through its U.S. affiliate, Tenaris USA; 2) Dalmine shipped merchandise to unaffiliated distributors through its U.S. affiliate, Tenaris USA.⁵¹

For its EP sales, Dalmine did not quantify its selling activities in the U.S. market.⁵² For both channels of its CEP sales, Dalmine reported that it performed the same selling functions, but at the same or a lower level of intensity.⁵³ Here, too, Dalmine was unable to support the method by which it quantified these levels.⁵⁴ When comparing the net difference in selling activities across CEP channels, we find there were no significant differences in selling activities performed by Dalmine to make CEP sales in the U.S. market, and further, any reported differences were not

⁴⁵ See Dalmine July 7, 2017 AQR at A-13.

⁴⁶ *Id.* at Exhibit A5.

⁴⁷ Dalmine August 7, 2017 SQR at 16.

⁴⁸ Dalmine September 11, 2017 SQR at 2-3.

⁴⁹ See, *e.g.*, Dalmine August 7, 2017 SQR at 16; Dalmine September 11, 2017 SQR at 2-3.

⁵⁰ See Dalmine August 16, 2017 CQR at 24.

⁵¹ *Id.*

⁵² See, *e.g.*, Dalmine's October 19, 2017 Supplemental Questionnaire Response at Exhibit Supp.3 A1 (Dalmine October 19, 2017 SQR).

⁵³ *Id.*

⁵⁴ Dalmine August 7, 2017 SQR at 16.

supported by quantifiable evidence on the record. Because Dalmine did not quantify its selling activities for EP sales in the U.S. market, the Department does not find there is support justifying separate LOTs for EP and CEP sales. As such, the Department preliminarily finds that there is a one LOT in the U.S. market.

Finally, similar to our analysis above, when comparing the net differences between selling activities in the U.S. market LOT and the home market LOT, the Department finds there were no significant differences in selling, and further, any reported differences were not supported by quantifiable evidence on the record. As such, the Department finds the home market LOT is the same LOT as the U.S. market. Because Dalmine's home market LOT is at the same LOT as the U.S. market, no LOT adjustment is necessary, and further, no CEP offset is warranted pursuant to, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

Metalfer

In the home market, Metalfer reported that all of its sales were through four customer categories and two channels of distribution (*i.e.*, to affiliated customers and unaffiliated customers).⁵⁵ Metalfer reported that there were virtually no differences in either the sales process or its selling functions for sales made through either channel.⁵⁶

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Metalfer performed sales and marketing, freight and delivery services, and technical support services for its home market sales, but did not provide warranty services, inventory maintenance or warehousing for its home market sales. Because we find that there were no significant differences in selling activities performed by Metalfer to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Metalfer.⁵⁷

With respect to the U.S. market, Metalfer reported that it made EP sales to customers in one channel of distribution (*i.e.*, unaffiliated U.S. customers).⁵⁸ Based on the selling function categories noted above, we find that Metalfer performed sales and marketing, freight and delivery services, and technical support services for all of its reported U.S. sales. Because Metalfer performed the same selling functions at the same level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Metalfer performed for its U.S. and home market customers do not differ significantly.

⁵⁵ See Metalfer October 27, 2017 SQR at 18.

⁵⁶ See Metalfer June 30, 2017 AQR at 10-18; Metalfer July 26, 2017 SQR at Exhibit SA-7. Although Metalfer reported one difference in selling activities between customer categories, distributor training for sales unaffiliated distributors, it reported this activity as "Low" and explained this designation as "designated company occasionally may perform this function," which on its own does not warrant a distinction between channels for selling activities.

⁵⁷ See Metalfer July 26, 2017 SQR at Exhibit SA-7.

⁵⁸ See Metalfer's August 18, 2017, Section C Questionnaire Response at 21-22.

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, an LOT adjustment is not warranted.

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.⁵⁹ Accordingly, the Department requested this information from Dalmine and Metalfer in this investigation. We examined 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 Dalmine except as follows:

- Dalmine's reporting methodology for its variance calculation appears unreasonable due to it being calculated on a very broad basis (*i.e.*, for the entire company) rather than being calculated on a more specific level (*i.e.*, by product or category (*e.g.*, cold drawn products, tubes, *etc.*)). Therefore, as adverse facts available, for all products we are using the highest reported absolute variance amount in the cost database to increase the reported costs;⁶⁰ and,
- Dalmine purchased hollow tubes from affiliated producers during the POI. We adjusted the reported direct materials cost to reflect the higher of transfer price, market price or COP for the affiliated purchases of hollow tubes in accordance with 773(f)(3) of the Act.⁶¹

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

- We adjusted Metalfer's costs to include a certain unsupported cost item that was excluded from the reported costs.⁶²

⁵⁹ 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*).

⁶⁰ For further discussion, see Partial Application of Facts Available, below.

⁶¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Dalmine S.p.A.," dated November 15, 2017 (Dalmine Preliminary Cost Analysis Memorandum).

⁶² See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Metalfer S.p.A.," dated November 15, 2017.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) 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 billing adjustments, discounts and rebates, 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.

We found that, for certain products, more than 20 percent of Dalmine's and Metalfer'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 Dalmine and Metalfer, we based NV on comparison-market prices. We calculated NV based on delivered prices to unaffiliated customers. We also made deductions 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 CEP and EP sales, where appropriate, 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 other direct selling expenses, and added

U.S. direct selling expenses, *i.e.*, credit expenses and other direct selling expenses.⁶³

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.⁶⁴

XI. PARTIAL APPLICATION OF FACTS AVAILABLE

A) Partial 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, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, 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.

As noted in the “Background” section, above, Dalmine timely responded to the Department’s original AD questionnaire and its supplemental questionnaires. Specifically, Dalmine provided a response to the Department’s Section C questionnaire regarding U.S. sales on August 16, 2017,⁶⁵ and responded to the Department’s supplemental questionnaire concerning Sections A, B and C of the questionnaire on October 19, 2017.⁶⁶ However, as discussed in the proprietary analysis memorandum, Dalmine’s revised U.S. sales database lacked data in the form and manner requested by the Department for certain of Dalmine’s movement expenses incurred on U.S. sales.⁶⁷ Dalmine also timely provided a response to the Department’s Section D questionnaire

⁶³ See Dalmine Preliminary Analysis Memorandum at 9-14; Metalfer Preliminary Analysis Memorandum at 6-8.

⁶⁴ See 19 CFR 351.411(b).

⁶⁵ See Dalmine August 16, 2017 CQR.

⁶⁶ See Dalmine October 19, 2017 SQR.

⁶⁷ Because Dalmine’s reporting involves business proprietary information a more detailed discussion of its failure to provide expense data in the form and manner requested by the Department is included in the Dalmine Preliminary

regarding its COP on August 16, 2017 and the Department's supplemental questionnaires regarding its COP.⁶⁸ However, as discussed above under "Calculation of COP," Dalmine failed to report certain of its COP data in a reasonable manner required by the Department.⁶⁹

Accordingly, necessary information is not on the record and Dalmine failed to provide requested information by the deadlines for the submission in the form and manner requested by the Department. Therefore, we find that the use of facts available is warranted in determining certain of Dalmine's expenses incurred on U.S. sales pursuant to sections 776(a)(1) and (2)(B) of the Act.

B) *Use of Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁷⁰ In doing so, and under the TPEA,⁷¹ 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.⁷² 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."⁷³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁷⁴ It is the Department's practice to consider, in employing adverse

Analysis Memorandum.

⁶⁸ See, e.g., Dalmine's August 16, 2017 Section D Questionnaire Response; Dalmine's November 1, 2017 Supplemental Questionnaire Response (Dalmine November 1, 2017 SQR).

⁶⁹ Given that Dalmine's reported information involves business proprietary information, a more detailed discussion of its failure to provide cost data in the form and manner requested by the Department is included in the Dalmine Preliminary Cost Analysis Memorandum.

⁷⁰ 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).

⁷¹ On June 29, 2015, the TPEA 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. 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.

⁷² See section 776(b)(1)(B) of the Act.

⁷³ 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).

⁷⁴ 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.⁷⁵

We preliminarily find that Dalmine failed to cooperate by not acting to the best of its ability to comply with requests for information in this investigation, within the meaning of section 776(b) of the Act, because it failed to provide necessary movement expense data and COP data in the form and manner required by the Department.⁷⁶ Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to Dalmine.⁷⁷ As adverse facts available, we are assigning to Dalmine's U.S. sales with affected expenses the highest relevant expense reported, respective to the type of expense, reported in Dalmine's U.S. sales database.⁷⁸ As adverse facts available, we are using the highest relevant information on the record to revise the variance and increase the reported variable conversion costs accordingly.⁷⁹

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁸⁰ As we are not relying on secondary information because it is information obtained from Dalmine in this investigation, no corroboration is necessary.

XII. CRITICAL CIRCUMSTANCES

On October 23, 2017, the petitioners alleged that critical circumstances exist with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).⁸¹ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A) Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of

⁷⁵ 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 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 (March 14, 2014).

⁷⁶ See, e.g., Dalmine October 19, 2017 SQR; Dalmine November 1, 2017 SQR; see also 19 CFR 351.401(g)(1)-(3). Because Dalmine's reporting involves business proprietary information a more detailed discussion of the Department's partial application of adverse facts available is in the Dalmine Preliminary Analysis Memorandum and the Dalmine Preliminary Cost Analysis Memorandum.

⁷⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁷⁸ See Dalmine Preliminary Analysis Memorandum.

⁷⁹ See Dalmine Preliminary Cost Analysis Memorandum.

⁸⁰ See also 19 CFR 351.308(d).

⁸¹ See the petitioners' letter "Certain Cold-Drawn Mechanical Tubing from the People's Republic of China, Italy, and the Republic of Korea - Critical Circumstances Allegation," dated October 23, 2017.

dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “in general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Under 19 CFR 351.206(i), the Department defines “relatively short period” generally as the period starting on the date the proceeding begins i.e., the date the petition is filed and ending at least three months later. This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.

B) Critical Circumstances Allegation

The petitioners allege that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition, which could be as high as 147.63 percent on a transaction-specific basis. Thus, the petitioner asserts that certain dumping margins alleged in the petition, which were up to 68.95 percent for Italy, exceed the 15 percent threshold used by the Department to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.⁸² The petitioners argue that importers of cold-drawn mechanical tubing from the Italy have been on notice that dumped imports are likely to cause injury since the ITC’s June 9, 2017, preliminary affirmative injury finding. Further, the petitioners allege that there is a pattern of dumping similar merchandise in the United States by companies that are subject to this investigation. Specifically, the petitioners allege that Italian cold-drawn mechanical tubing producers are, or have been, subject to AD and countervailing duty orders covering butt-weld pipe and oil country tubular goods.⁸³

⁸² *Id.* at 7.

⁸³ *Id.* at 9 (citing to *Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines*, 66 FR 11257 (February 23, 2001); *Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines: Continuation of Antidumping Duty Orders*, 77 FR 42697 (July 20, 2012); *Notice of Countervailing Duty Order: Oil Country Tubular Goods (“OCTG”) from Italy*, 60 FR 40822 (August 10, 1995); *Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan Korea and Mexico, and Partial Revocation of Those Orders from Argentina and Mexico with Respect to Drill Pipe*, 66 FR 38630 (July 25, 2001)).

The petitioners argue that regarding section 733(e)(1)(B) of the Act, which examines whether there have been “massive imports of the subject merchandise over a relatively short period,” the Department should compare imports of cold-drawn mechanical tubing for the four-month period from January 2017 through April 2017 (base period) to imports of such merchandise during the four-month period from May 2017 through August 2017 (comparison period) because official import statistics were available through August 2017.⁸⁴ The petitioners allege that import statistics released by the Department’s and ITC Dataweb indicate that shipments of merchandise under consideration during the comparison period increased significantly in terms of volume (55.7 percent) between the base period and the comparison period, and as a result, exceeded the threshold for “massive” imports of cold-drawn mechanical tubing from the Italy, as provided under 19 CFR 351.206(h) and (i).

C) Analysis

The Department’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioners’ critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise. Although the petitioners allege that there is a pattern of dumping similar merchandise in the United States by companies that are subject to this investigation, the record does not identify any other AD proceedings in which Dalmine or Metalfer have participated.

Because there is no prior history of injurious dumping, we next examine whether the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, the Department normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping. For purposes of this investigation, the Department preliminarily determines that the knowledge standard is met because Dalmine’s preliminary margin is greater than 15 percent for CEP sales and Metalfer’s preliminary margin is greater than 25 percent for EP sales.

Accordingly, because the statutory criteria of section 733(e)(1)(A) of the Act have been satisfied, we examined whether imports from Dalmine and Metalfer were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). It is the Department’s practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months. Based on these practices, the Department

⁸⁴ *Id.* at 13.

compared import data for the period May 2017 through September 2017 (the last month for which import data is currently available) with the preceding five-month period of December 2016 through April 2017. Consistent with 19 CFR 351.206(i)), we preliminarily find that imports based on Dalmine's and Metalfer's reported shipments of merchandise under consideration during the comparison period increased by more than 15 percent over its respective imports in the base period.⁸⁵ Therefore, we preliminarily find there to be massive imports for Dalmine and Metalfer, pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).

For the companies subject to the "all others" rate, the rate for all other producers and exporters is the publicly-ranged weighted average of the rates calculated for Dalmine and Metalfer, which exceeds the threshold to impute knowledge to the customers or importers that the subject merchandise was being sold at LTFV. Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period December 2016 through September 2017, using shipment data from Global Trade Atlas, adjusted to remove shipments reported by Dalmine and Metalfer. Based on our analysis, the shipment data do not demonstrate a massive surge in imports for "all other" producers/exporters, as defined by 19 CFR 351.206(h).⁸⁶

As a result, in accordance with section 773(e)(1) of the Act, we preliminarily find that critical circumstances exist for Dalmine, Metalfer, but not for "all other" producers/exporters of cold-drawn mechanical tubing in Italy. We will make a final determination concerning critical circumstances when we issue our final determination of sales at LTFV for this investigation.

XIII. 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.

⁸⁵ See Memorandum, "Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing from Italy: Critical Circumstances Analysis," dated concurrently with this memorandum.

⁸⁶ *Id.*

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

11/15/2017

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