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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  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Stainless Steel Butt-Weld Pipe  
Fittings from Italy; 2017-2018

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## SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings (SSBW pipe fittings) from Italy. The period of review is February 1, 2017, through January 31, 2018. The review covers one producer/exporter of the subject merchandise: Filmag Italia SpA (Filmag). Commerce selected Filmag for individual examination in this review and preliminarily finds that it has not sold subject merchandise at less than normal value during the period of review. We are rescinding the review with respect to Tectubi Raccordi S.p.A. (Tectubi) for which the petitioners, Core Pipe Products, Inc., Shaw Alloy Piping Products, LLC, and Taylor Forge Stainless Inc., timely withdrew their request for review.

## Background

On February 1, 2018, Commerce published a notice of opportunity to request an administrative review of the order on SSBW pipe fittings from Italy.<sup>1</sup> Filmag self-requested a review on February 8, 2018, and the petitioners filed a request for a review for Filmag and Tectubi on February 28, 2018. We initiated this review on April 16, 2018.<sup>2</sup> On April 26, 2018, Tectubi

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<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 4639 (February 1, 2018).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018).



certified that it had no shipments of subject merchandise to the U.S. during the POR, and on May 14, 2018, the petitioners withdrew their request for an administrative review of Tectubi.<sup>3</sup>

On October 31, 2018, we extended the time limit for completion of the preliminary results of the review to no later than February 8, 2019.<sup>4</sup> As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.<sup>5</sup> On March 15, 2019, Commerce extended the preliminary results of review until April 9, 2019.<sup>6</sup>

### Scope of the Order

For purposes of the order, the product covered is certain stainless steel butt-weld pipe fittings. Stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the order are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the order.

The order does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

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<sup>3</sup> See Letter from the petitioners to Commerce, "Stainless Steel Butt-Weld Pipe Fittings From Italy – Petitioners' Withdrawal of Review Request of Tectubi," dated May 14, 2018.

<sup>4</sup> See Memorandum to James Maeder, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Kent Boydston, International Trade Compliance Analyst, on the subject of "Stainless Steel Butt-Weld Pipe Fittings from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017-18," dated October 31, 2018.

<sup>5</sup> See Memorandum to the file from 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 regarding "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>6</sup> See Memorandum to James Maeder, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Kent Boydston, International Trade Compliance Analyst, on the subject of "Stainless Steel Butt-Weld Pipe Fittings from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017-18," dated March 15, 2019.

The butt-weld fittings subject to the order is currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### Application of Partial Facts Available and Use of Adverse Inference

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Tariff Act of 1930, as amended (the Act), provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 776(b) of the Act states that if Commerce 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, Commerce may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Section 782(c)(1) of the Act states that Commerce 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 Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

#### Application of Partial Adverse Facts Available (AFA) Due to Unreported Commission Expenses

In our initial May 10, 2018, antidumping duty questionnaire, we asked Filmag to report the unit cost of commissions paid to selling agents and if more than one commission was paid, to report each commission in a separate field. In our initial antidumping duty questionnaire, we further instructed Filmag to include samples of each type of commission agreement used. In its June 7, 2018, questionnaire response, Filmag reported that it paid a percentage of the gross unit price of subject merchandise to its commission agent for all U.S. sales.<sup>7</sup> In its June 28, 2018, Section B-D questionnaire response, Filmag reported that it paid a percentage of the value of goods reported on the invoice to its U.S. sales agent.<sup>8</sup> In its Section B-D questionnaire response, Filmag failed to include samples of each type of commission agreement used as instructed in our initial May 10, 2018, antidumping duty questionnaire.

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<sup>7</sup> See Filmag's Letter to Commerce, "Stainless steel butt-welded pipe fittings from Italy; §A QR," dated June 7, 2018 at 14 (Fimag AQR).

<sup>8</sup> See Filmag's Letter to Commerce, "Stainless steel butt-welded pipe fittings from Italy; B,C,D, QR," dated June 28, 2018 (Fimag BCDQR) at 72-73.

In our September 24, 2018, first supplemental questionnaire, we asked Filmag to explain if it paid a commission rate other than 5 percent for any sales to the United States during the POR and if so, to explain in detail and provide documentation supporting its explanation. In its October 8, 2018, first supplemental questionnaire response, Filmag did not report any payments to its commission agent besides a percentage of sales.<sup>9</sup> In our February 11, 2019, second supplemental questionnaire, we asked Filmag to confirm that the percentage of commission paid is calculated solely based on gross unit price and to provide documentation of invoices from its selling agent for two sales. In its February 25, 2019, second supplemental questionnaire response, Filmag again reported that it paid a percentage of the gross unit price of subject merchandise to its commission agent for all U.S. sales and provided the requested invoices from its commission agent.<sup>10</sup>

Filmag's commission agent invoices provided in its February 25, 2018, second supplemental questionnaire response indicated an additional commission expense for "Commercial & Technical Services" previously unreported in Filmag's questionnaire responses.<sup>11</sup> Filmag stated that it pays this "Commercial & Technical Services" expense regardless of whether a given sale is made, and therefore it is not a direct selling expense.<sup>12</sup> Filmag further stated that it pays its commission agent for "Commercial & Technical Services" for not only U.S. sales but also Canadian sales, as well as sales where the customer is a U.S. company but the subject merchandise is shipped to a third country. Therefore, Filmag claims that the monthly payments are indirect and not related exclusively to U.S. shipments.<sup>13</sup>

Even if the "Commercial & Technical Services" expenses that Filmag pays to its commission agent do not vary based on the amount of Filmag's merchandise that the commission agent sold, these are payments that Filmag would not have made if the commission agent were not providing commission-related services. Further, because we only received documentation of an additional commission-related expense in Filmag's February 25, 2019, response, record evidence does not demonstrate whether the "Commercial & Technical Services" expenses applied to all of Filmag's U.S. sales for both subject and non-subject merchandise. This gap in the record is due to Filmag not reporting these expenses earlier and not explaining what they are.

Accordingly, we find that information necessary to accurately calculate Filmag's commission expenses for U.S. sales is not on the record because Filmag failed to properly report payments to its commission agent. Thus, in accordance with section 776(a)(1) of the Act and section 776(a)(2)(A) of the Act, it is necessary to rely on the facts otherwise available in calculating commission expenses.

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<sup>9</sup> See Letter from Filmag to Commerce, "Stainless steel butt weld pipe fittings from Italy; Supplemental questionnaire response," dated October 8, 2018 (Filmag First SQR) at 4.

<sup>10</sup> See Filmag's Letter to Commerce, "Stainless steel butt weld pipe fittings from Italy; Second supplemental questionnaire response," dated February 25, 2019 at 6-7 (Filmag Second SQR).

<sup>11</sup> See Filmag Second SQR at Exhibit 6.

<sup>12</sup> See Letter from Filmag to Commerce, "Stainless steel butt weld pipe fittings from Italy; Response to petitioners' pre-preliminary comments," dated March 11, 2019 at 1-2 (Filmag Rebuttal Comments).

<sup>13</sup> *Id.*

We also preliminarily find that Filmag has not acted to the best of its ability to comply with a request for information by failing to provide Commerce with complete information on all of its commission expenses. Accordingly, in accordance with section 776(b) of the Act and 19 CFR 351.308, we preliminarily determine that the use of an adverse inference when selecting from among the facts otherwise available is warranted. In using AFA, we are dividing the total yearly “Commercial & Technical Services” fees that Filmag pays to its commission agent by the sales of U.S. subject merchandise. We then multiply this amount by gross unit price and deduct it from Filmag’s U.S. export price in the margin-calculation program.<sup>14</sup>

#### Partial Rescission of Administrative Review

As noted in the “Background” section above, the petitioners filed a request for review of Filmag and Tectubi. Commerce initiated a review on each of these companies, but the petitioner subsequently filed a withdrawal of its request for review for Tectubi. As no other party requested a review of Tectubi and in response to the petitioner’s timely filed withdrawal request, we are rescinding the administrative review in part, pursuant to 19 CFR 351.213(d)(1), with respect to Tectubi.

### DISCUSSION OF THE METHODOLOGY

#### Comparisons to Normal Value

To determine if Filmag’s sales of the subject merchandise from Italy to the United States were made at less than normal value, Commerce compared the export prices to the normal value, pursuant to section 773(a)(1)(B) of the Act, and 19 CFR 351.414(c)(1) and (d) and as described in the “Export Price” and “Normal Value” sections below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for goods produced by Filmag and sold in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) the type of fitting; (2) the grade of steel; (3) the type of feedstock used in the production of the fitting; (4) the nominal pipe sizes of the larger and, if applicable, smaller openings; (5) the wall thickness of the pipe; and (6) the finish on the fitting.<sup>15</sup>

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<sup>14</sup> For a more detailed description of our commission expense calculation, *see* Memorandum to the File from Kent C. Boydston, International Trade Compliance Analyst, regarding “Analysis of Data Submitted by Filmag Italia SpA in the Preliminary Results of the 2017/2018 Administrative Review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Italy,” (Fimag Preliminary Analysis Memorandum) dated concurrently with this memorandum.

<sup>15</sup> For a more detailed description of our product comparison, *see* Filmag Preliminary Analysis Memorandum at 4-7.

#### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(b) and (c)(1), Commerce calculates dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. Commerce's regulations also provide that dumping margins may be calculated by comparing normal values, based on individual transactions, to export prices of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average normal values to export prices of individual transactions (average-to-transaction method).<sup>16</sup> In recent antidumping investigations, Commerce applied a "differential pricing" (DP) analysis for determining whether application of the average-to-average comparison method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).<sup>17</sup> Commerce may determine that, in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. Commerce will continue to develop its approach in this area based on comments received in this proceeding and others, and on its additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The DP analysis used in these preliminary results requires a finding of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the DP 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 DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by Filmag. Regions are defined using the reported destination code (*e.g.*, zip codes) 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 period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between export price and normal value for the individual dumping margins.

In the first stage of the DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region

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<sup>16</sup> See 19 CFR 351.414(b)(1)-(2).

<sup>17</sup> See also *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (*Xanthan Gum from the PRC*), and the accompanying Issues and Decision Memorandum at Comment 3.

or time period differ significantly from the net 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. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant and the sales were found to pass the Cohen's *d* test if the calculated Cohen's *d* coefficient is equal to or exceeds the large 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 export 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 the 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 (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate, in the first stage, the existence of a pattern of export prices that differ significantly, such that an alternative comparison method should be considered, then, in the second stage of the DP analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative 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 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 margin 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 margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## B. Results of Differential Pricing Analysis

Based on the results of the DP analysis for this review, Commerce finds that the value of total sales for Filmag that passed the Cohen's *d* test was less than 33 percent, and, as such, these results do not confirm the existence of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Thus, the results do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce has preliminarily determined to use the average-to-average method in making comparisons between export prices and normal values for Filmag in this review.<sup>18</sup>

### Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>19</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>20</sup>

Throughout its questionnaire responses, Filmag reported the earlier of the invoice date or the shipment date as the date of sale in both the home and U.S. markets.<sup>21</sup> Filmag explained that for home market sales, it is not necessary for an invoice to accompany a shipment and can be issued subsequent to and separately from a shipment. By contrast, Filmag stated that for U.S. sales, customs clearance procedures require presentation of both an invoice and shipping documents, and therefore these documents are issued simultaneously.<sup>22</sup> Based on this information and our practice, we preliminarily find that, in the home market, the date of shipment best reflects the date on which material terms of sales were established for purposes of this review when the date of shipment precedes the date of invoice. Otherwise, we preliminarily find that the invoice date is the appropriate date of sale. For U.S. sales, we preliminarily find that the date of invoice is the date in which the material terms of sale are finalized and, thus, is the appropriate date of sale.

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<sup>18</sup> In these preliminary results, Commerce applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, Commerce compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

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

<sup>20</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>21</sup> See Filmag AQR at 15, and Filmag BCDQR at 21 and 57.

<sup>22</sup> See Filmag First SQR at 4-5.



## Export Price

Section 772(a) of the Act defines export price as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the U.S. to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the U.S., as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the export-price methodology for Filmag because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export prices was not otherwise warranted.

We calculated export price based on the packed price that Filmag charged to the first unaffiliated purchaser in the United States. We made adjustments, where appropriate, from the starting price for movement expenses (*e.g.*, brokerage and handling expenses in the United States, international freight expenses, and U.S. customs duties), in accordance with section 772(c)(2)(A) of the Act. We also made adjustments, where appropriate, for imputed credit and certain direct selling expenses.<sup>23</sup>

## Normal Value

### A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, whether the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales),<sup>24</sup> we compared the volume of Filmag’s home-market sales to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that the company’s aggregate volume of home market sales of the foreign like product was greater than the five-percent threshold and, therefore, we used the home market sales as the basis for normal value in this review.

### B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act,<sup>25</sup> Commerce, to the extent practicable, determines normal value based on sales in the comparison market made at the same level of trade as the export price or constructed export price sales. Pursuant to 19 CFR 351.412(c)(1)(iii), the normal-value level of trade is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. In identifying levels of trade for export price and comparison-market sales, we consider the starting prices before any

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<sup>23</sup> For a more detailed description of our export price calculation *see* Filmag Preliminary Analysis Memorandum.

<sup>24</sup> *See* 19 CFR 351.404(b)(2).

<sup>25</sup> *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994), 829-831.

adjustments.<sup>26</sup> For export price, the level of trade is based on the starting price, which is usually the price from the exporter to the importer.<sup>27</sup>

To determine whether comparison-market sales are at a different level of trade than export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>28</sup> If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and the comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In its questionnaire responses, Filmag stated there was only one channel of distribution applicable to both the home and U.S. market, which consists of selling directly to the customer.<sup>29</sup> Based on a review of Filmag's questionnaire responses, we preliminarily find that the selling functions performed for home-market customers are performed at a similar degree of intensity as the selling functions performed for United States sales.<sup>30</sup> Accordingly, we preliminarily find that Filmag only had one level of trade in the home and U.S. markets. Because there was only one level of trade in the home market, we were unable to calculate a level-of-trade adjustment. Therefore, for these preliminary results, we matched the export-price sales to home-market sales without making a level-of-trade adjustment to normal value.

### C. Cost of Production

Pursuant to section 773(b)(2) of the Act,<sup>31</sup> Commerce required that Filmag provide constructed-value and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

#### 1. Calculation of Cost of Production

We calculated the COP for Filmag based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Filmag, with adjustments.<sup>32</sup>

#### 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the per-unit price of the comparison-market sales of the foreign like product to determine whether these sales

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<sup>26</sup> See Section 773(a)(1)(B)(i) of the Act.

<sup>27</sup> See 19 CFR 351.412(c)(1)(i).

<sup>28</sup> See 19 CFR 351.412(c)(2).

<sup>29</sup> See Filmag AQR at 13.

<sup>30</sup> *Id.*

<sup>31</sup> See 19 USC 1677b(b)(2)(A)(ii).

<sup>32</sup> For a more detailed description of our cost of production calculation see Filmag Preliminary Analysis Memorandum at 6.

had been made at prices below the COP. In particular, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

### 3. Results of the Cost of Production Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating normal value. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”<sup>33</sup> Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.<sup>34</sup>

For Filmag, the cost test indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales as outside of the ordinary course of trade in our analysis of the company’s home-market sales data and used the remaining sales to determine normal value.

#### D. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value for Filmag based on the reported ex-factory prices to unaffiliated customers in the comparison market. Where appropriate, we made circumstance-of-sale adjustments (*i.e.*, credit expenses), pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with home-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing of the foreign like product and subject merchandise.<sup>35</sup>

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<sup>33</sup> See section 773(b)(2)(C)(ii) of the Act.

<sup>34</sup> See section 773(b)(2)(D) of the Act.

<sup>35</sup> See 19 CFR 351.411(b).

### E. Price-to-Constructed Value Comparison

As noted in the “Product Comparisons” section above, we found that Filmag reported sales of foreign like product that, although not identical, was similar to the subject merchandise sold in the United States. Consequently, it was not necessary in our price comparisons to base normal value on constructed value, pursuant to section 773(a)(4) of the Act.

### Currency Conversion

We made currency conversions to U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on exchange rates, as certified by the Federal Reserve Bank, in effect on the dates of the U.S. sales. These rates are available on the Enforcement and Compliance’s website at <http://enforcement.trade.gov/exchange>.

### Recommendation

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

4/9/2019

X



Signed by: GARY TAVERMAN

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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