



A-475-842
Investigation
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DATE: October 6, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Common Alloy Aluminum Sheet from Italy

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 9, 2019, Commerce received an antidumping duty (AD) petition concerning imports of aluminum sheet from Italy, filed by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners), domestic



producers of aluminum sheet.¹ On March 30, 2020, Commerce initiated the AD investigation on aluminum sheet from Italy.²

In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigations,” in the appendix.³ The Petition identified the producers and/or exporters of the subject merchandise in Italy.⁴

On April 29, 2020, 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 aluminum sheet from Italy.⁵

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of aluminum sheet to be reported in response to Commerce’s AD questionnaire.⁶ On April 27, 2020, we received timely-filed comments from interested parties.⁷ On May 11, 2020, we received timely-filed rebuttal product characteristics comments from interested parties. On May 18, 2020, Commerce officials spoke via telephone with counsel for the petitioners regarding the petitioners’ product characteristics comments and rebuttal comments.⁸ On May 19, 2020, Commerce determined the product characteristics applicable to this investigation.⁹

From May 4 through May 6, 2020, we received timely-filed comments concerning the scope of the investigation from interested parties. On May 21, 2020, we received timely-filed rebuttal scope comments from interested parties. On May 27, 2020, Commerce officials spoke with counsel for the petitioners via telephone regarding the petitioners’ scope comments and rebuttal

¹ See Petitioners’ Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey - Petition for the Imposition of Antidumping and Countervailing Duties,” dated March 9, 2020 (Petition).

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair Value Investigations*, 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

³ *Id.*, 85 FR at 19448.

⁴ See the Petition, Volume I at Exhibit GEN-6.

⁵ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey*, Investigation Nos. 701–TA–639–642 and 731–TA–1475–1492 (Preliminary), 85 FR 23842 (April 29, 2020).

⁶ See *Initiation Notice*, 85 FR at 19445. Commerce subsequently extended the deadlines for comments and rebuttal comments on the scope and product characteristics.

⁷ See Memorandum, “LTFV Investigations on Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey – Scope Comments,” dated May 4, 2020 (Preliminary Scope Decision Memorandum) for further discussion.

⁸ See Memorandum, “Common Alloy aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Phone Call with Outside Counsel,” dated May 19, 2020.

⁹ See Commerce’s Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Product Characteristics,” dated May 19, 2020 (Commerce’s Product Characteristics Letter).

comments.¹⁰ We issued the preliminary scope comments decision memorandum, which is dated simultaneously with this memorandum.¹¹

On June 4, 2020, Commerce issued revised descriptions for certain product characteristics.¹² On June 11, 2020, the petitioners submitted comments in response to requests from respondents in a number of aluminum sheet investigations to rescind the revisions made in Commerce's Revised Product Characteristics Memorandum.¹³ On June 12, 2020, Commerce officials spoke via telephone with counsel for the petitioners, and counsel for respondents in a number of aluminum sheet investigations regarding Commerce's Revised Product Characteristics Memorandum.¹⁴ On June 16, 2020, we issued the final product characteristics in this investigation.¹⁵

On April 23, 2020, Commerce selected Laminazione Sottile S.p.A. (Laminazione) and Profilglass S.p.A. (Profilglass) for individual examination as mandatory respondents in this investigation. Laminazione and Profilglass are the two producers/exporters with the largest volume of subject exports during the period of investigation (POI) based on the Q&V data we received.¹⁶ Accordingly, we issued the AD questionnaire to Laminazione and Profilglass.¹⁷

On May 15, 2020, Laminazione filed a request with Commerce to be excused from reporting the downstream sales of its affiliate, Italcoat S.r.l. during the POI. Specifically, in its request, Laminazione stated that it sold subject merchandise to Italcoat, which further processed the subject merchandise and then re-sold the further processed merchandise in the home market.¹⁸ Further, Laminazione explained that reporting Italcoat's sales of further manufactured

¹⁰ See Memorandum, "Common Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Deadline for Scope Comments: *Ex Parte* Telephone Call with Counsel for the Aluminum Association Trade Enforcement Working Group," dated May 29, 2020.

¹¹ See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated October 6, 2020 (Preliminary Scope Decision Memorandum).

¹² See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Product Characteristics Correction," dated June 4, 2020 (Revised Product Characteristics Memorandum).

¹³ See Petitioners' Letter, "Antidumping Investigations Concerning Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Petitioners' Response to Respondents' Requests to Rescind Product Characteristics Clarification and for Extensions of Time to Submit Section B–D Questionnaire Responses," dated June 11, 2020.

¹⁴ See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Meeting with Outside Counsel," dated June 16, 2020.

¹⁵ See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Revised Product Characteristics Guidance," dated June 16, 2020.

¹⁶ See Memorandum, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Italy: Selection of Respondents for Individual Examination," dated April 23, 2020.

¹⁷ See Commerce's Letter, "Antidumping Duty Questionnaire," dated April 24, 2020.

¹⁸ See Laminazione's Letter, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Request Regarding Sections B and D Responses on Further-Manufactured Products," dated May 15, 2020 (Laminazione's Exemption Request).

merchandise to the home market would be extremely burdensome, and that those sales of foreign like product during the POI would be below the threshold set forth in 19 CFR 351.403(d). In addition, Laminazione cited to several cases where Commerce exempted respondents from reporting downstream sales made by affiliated resellers in the home market due to their small sales volume.¹⁹

On May 27, 2020, the petitioners requested that Commerce reject Laminazione's exemption request arguing that 19 CFR 351.403(d) applies to the aggregate proportion of downstream home-market sales through affiliated parties, and that Laminazione's request for exclusion is based on a preliminary analysis. Furthermore, they argued that the inclusion of those sales may be necessary for Commerce's analysis later on, and Commerce may need the entire body of sales of the foreign like product.²⁰ The petitioners reiterated their arguments for rejecting Laminazione's exclusion request in their June 12, 2020 comments on Laminazione's section A questionnaire response.²¹

After in-depth analysis of all the arguments and concerns presented by Laminazione and the petitioners, Commerce preliminarily determined to exempt Laminazione from reporting its affiliate Italcoat's POI home market sales of further manufactured foreign like product.²²

On July 29, 2020, Commerce postponed the preliminary determination of this investigation by 50 days, to October 6, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).²³

¹⁹ See Laminazione's Exemption Request at 3-4 (citing *Stainless Steel Sheet and Strip in Coils from Mexico; Final Result of Antidumping Administrative Review*, 70 FR 73444 (December 12, 2005); and accompanying Issues and Decision Memorandum (IDM) at Comment 2; see also *Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review*, 71 FR 42802 (July 28, 2006), and accompanying IDM at Comment 3; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 67 FR 5578- (August 30, 2002), and accompanying IDM at Comment 5; and *Stainless Steel Sheet and Strip from Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 6490 (February 12, 2002), and accompanying IDM at Comment 11).

²⁰ See Petitioners' Letter, "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments on Laminazione's Request to be Excused from Reporting Certain Home-Market Sales," dated May 27, 2020; see also Laminazione's Letter, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Response to Petitioners' Comments on Laminazione's Request for Section B and Section D Data Reporting Relief," dated June 1, 2020.

²¹ See Petitioners' Letter, "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments on Laminazione's Section A Questionnaire Response," dated June 12, 2020.

²² See Commerce Letter, "Less-Than-Fair Value Investigation of common Alloy Aluminum Sheet from Italy – Reporting Exemption Request," dated June 23, 2020.

²³ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576 (July 29, 2020); see also Petitioners' Letter, "Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Petitioners' Request for Postponement of Preliminary Antidumping Determinations," dated July 16, 2020.

From July through September 2020, we sent supplemental questionnaires to both Laminazione²⁴ and Profilglass.²⁵ We received responses to these supplemental questionnaires between July and September 2020.²⁶ The petitioners submitted comments on Laminazione's and Profilglass' questionnaire responses from June through August 2020.²⁷

On September 17, 2020, Laminazione requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone its final determination in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to a six-month period.²⁸

On September 14, 2020, the petitioners requested that, in the event of a negative preliminary determination in this investigation, Commerce postpone its final determination in accordance with 19 CFR 351.210(b)(2)(i) and extend the provisional measures period in the antidumping

²⁴ See Commerce's Letters, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Laminazione Sottile S.p.A.," dated July 14, 2020; "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental; B-C Questionnaire for Laminazione Sottile S.p.A.," dated July 15, 2020; "Antidumping Duty Investigations of Common Alloy Aluminum Sheet from Italy – Second Supplemental B-C Questionnaire for Laminazione Sottile S.p.A.," dated August 20, 2020; "Antidumping Duty Investigation of common alloy Sheet from Italy," dated August 13, 2020; and "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy," dated September 17, 2020.

²⁵ See Commerce's Letters, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Profilglass S.p.A.," dated July 15, 2020 (Commerce July 15 Letter); "Antidumping Duty Less Than Fair Value Investigation of Common Alloy Aluminum Sheet from Italy," dated August 11, 2020 (Commerce August 11 Letter); "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Profilglass S.p.A.," dated August 14, 2020 (Commerce August 14 Letter); and "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Profilglass S.p.A.," dated September 11, 2020 (Commerce September 11 Letter).

²⁶ See Laminazione's July 28, 2020 Section A Supplemental Questionnaire Response; Laminazione's August 4, 2020, Sections B and C Supplemental Questionnaire Response (Laminazione August 4, 2020 BCSQR); Laminazione's September 3, 2020 Section D Supplemental Questionnaire Response (Laminazione September 3, 2020 DSQR); Laminazione's September 4, 2020 Sections B and C Second Supplemental Questionnaire Response; Profilglass' July 29, 2020 Section A Supplemental Questionnaire Response (Profilglass July 29, 2020 ASQR); Profilglass' August 28, 2020 Section D Supplemental Questionnaire Response (Profilglass August 28, 2020 DSQR); Profilglass' September 9, 2020 Sections A, B and C Supplemental Questionnaire Response (Profilglass September 9, 2020 ABCSQR); and Profilglass' September 14, 2020 Database Questionnaire Response (Profilglass September 14, 2020 Database SQR).

²⁷ See Petitioners' Letters, "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments on Laminazione Section A Questionnaire Response," dated June 12, 2020; "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments on Sections B and C Questionnaire Responses of Laminazione Sottile S.p.A.," dated July 8, 2020; "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments on Laminazione's Supplemental Questionnaire Response," dated August 18, 2020; "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments Regarding the Section A Questionnaire Response of Profilglass S.p.A.," dated June 3, 2020; "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments Regarding the Sections B and C Questionnaire Response of Profilglass S.p.A.," dated July 10, 2020; "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments Regarding Deficiencies in Profilglass S.p.A.'s Supplemental Section A Questionnaire Response," dated July 24, 2020; and "Common Alloy Aluminum Sheet from Italy – Petitioners' Comments Regarding Deficiencies in Profilglass S.p.A.'s Second Supplemental Section A Questionnaire Response," dated August 10, 2020.

²⁸ See Laminazione Sottile S.p.A.'s Letter, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Request to Extend Final Determination," dated September 17, 2020.

duty investigations from four to not more than six months in accord with 19 CFR 351.210(e)(2).²⁹

On September 17, 2020, and September 21, 2020, the petitioners submitted comments with respect to Laminazione and Profilglass, respectively, for consideration in the preliminary determination.³⁰ On September 28, 2020, Laminazione replied to the petitioners' comments.³¹ On October 1, 2020, Profilglass submitted comments and replied to the petitioners' comments.³²

III. PERIOD OF INVESTIGATION

The POI is January 1, 2019 through December 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2020.³³

IV. SCOPE OF INVESTIGATION

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

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).³⁵ As noted above, certain interested parties in the companion aluminum sheet investigations commented on the scope of the aluminum sheet investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.

²⁹ See Petitioners' Letter, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Petitioners' Request for Postponement of Final Antidumping Determinations," dated September 14, 2020.

³⁰ See Petitioners' Letters, "Common Alloy Aluminum Sheet from Italy – Petitioners' Pre-Preliminary Determination Comments Regarding Laminazione Sottile S.p.A.," dated September 17, 2020; and "Common Alloy Aluminum Sheet from Italy – Petitioners' Pre-Preliminary Determination Comments Regarding Profilglass S.p.A.," dated September 21, 2020.

³¹ See Laminazione's Letter, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Reply to Petitioners' Pre-Preliminary Determination Comments on Laminazione Sottile S.p.A.," dated September 28, 2020.

³² See Profilglass' Letter, "Re: Case A-475-842: Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Profilglass S.p.A. Pre-preliminary Comments and Rebuttals to Petitioners' Pre-Preliminary Comments," dated October 1, 2020.

³³ See 19 CFR 351.204(b)(1).

³⁴ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁵ See *Initiation Notice*, 85 FR at 19444.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

A. Statutory Framework

Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Use of Adverse Inference

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.³⁶ In addition, the Statement of Administrative Action (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁷ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁸ It is Commerce’s practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.³⁹ Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”⁴⁰ In doing so,

³⁶ See 19 CFR 351.308(a).

³⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 870 (SAA); see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).

³⁹ See SAA at 870; see also *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, 14477 (March 14, 2014).

⁴⁰ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final*

Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴¹

B. Use of Facts Available

Profilglass failed to report certain home market and U.S. sales, failed to submit the sales to home market affiliated parties, and had numerous inconsistencies or inaccurate information in its questionnaire and database responses.⁴² Due to Profilglass' incomplete questionnaire and database reporting, we find that necessary information is missing from the record. Additionally, we find that Profilglass withheld requested information, failed to provide information by the established deadlines, and significantly impeded the proceeding. Therefore, we preliminarily find, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, that the use of facts available is warranted.

C. Use of Adverse Inference

Profilglass' questionnaire responses on both the home market and U.S. sales and cost were incomplete and unreliable, containing numerous and significant inconsistencies. Necessary and fundamental sales and cost information is missing from the record and Commerce could not carry out its price analysis dumping calculation. For example, Profilglass did not report: (1) a significant number of home market sales in its home market sales database;⁴³ (2) gross unit price, quantity sold, and other associated sales expenses like inland freight, credit expenses, indirect selling expenses, etc. for certain home market and U.S. sales;⁴⁴ (3) all of the required product characteristics in the home market and U.S. sales, and incorrectly reported the CONNUMs for certain U.S. sales;⁴⁵ and (4) CONNUM-specific costs that should reflect the POI weighted average cost of identical materials, labor, variable and fixed overheads.⁴⁶ Furthermore, we provided multiple opportunities to Profilglass to submit complete and accurate sales and cost information with reliable data to correct the deficiencies we identified in its questionnaire responses.⁴⁷ Profilglass failed to do so. We preliminarily find that Profilglass has not acted to the best of its ability to comply with Commerce's requests for information, within the meaning of section 776(b) of the Act, because Profilglass did not report complete, reliable, and consistent sales and cost information in its initial and supplemental questionnaires.⁴⁸ Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily

Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

⁴¹ See section 776(b)(1)(B) of the Act.

⁴² See Memorandum, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Common Alloy Sheet from Italy: Preliminary Margin Analysis for Profilglass S.p.A.," dated October 6, 2020.

⁴³ See Profilglass September 14, 2020 Database SQR, File PROFHM01, PROFHM02, PROUS01, PROUS02.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Profilglass September 14, 2020 Database SQR, Exhibit Suppl D_11_COP Data File.

⁴⁷ See Commerce July 15 Letter; Commerce August 11 Letter; Commerce August 14 Letter; and Commerce September 11 Letter.

⁴⁸ See Profilglass July 29, 2020 ASQR; Profilglass August 28, 2020 DSQR; Profilglass September 9, 2020 ABCSQR; and Profilglass September 14, 2020 Database SQR.

determines to use an adverse inference when selecting from among the facts otherwise available.⁴⁹

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

As noted above, relying on an adverse inference in selecting from the facts available may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the Petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party. Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins; Commerce may use the component approach.⁵⁰

In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. In an investigation, Commerce’s practice with respect to assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated dumping margin of any respondent in the investigation. In this investigation, the highest dumping margin alleged in the Petition is 29.13 percent.⁵¹ In order to determine the probative value of the dumping margin alleged in the Petition in assigning an AFA rate, we examined the information on the record. When we compared the highest dumping margin alleged in the Petition to the transaction-specific dumping margin for the only cooperating mandatory respondent, Laminazione, we found the Petition rate of 29.13 percent to

⁴⁹ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances*, in Part, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum (PDM) at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances*, in Part, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁵⁰ See, e.g., *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

⁵¹ See *Initiation Notice*.

be higher than Laminazione's highest calculated transaction-specific dumping margin.

Because we were unable to corroborate the highest Petition margin with individual transaction-specific margins from Laminazione, we next applied a component approach and compared the NV and net U.S. price underlying the highest dumping margin alleged in the Petition to the range of NVs and net U.S. prices calculated for Profilglass. We found that we were able to corroborate the highest Petition margin of 29.13 percent through this component approach. Specifically, Commerce finds that NVs and net U.S. prices calculated for Laminazione are within the range of the NVs and net U.S. prices underlying the highest margin alleged in the Petition. Accordingly, because we corroborated the Petition rate to the extent practicable within the meaning of section 776(c) of the Act, we preliminarily find the 29.13 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, we preliminarily assigned this AFA rate to Profilglass.

VII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

To determine whether sales of aluminum sheet from Italy to the United States were made at Less-Than-Fair-Value (LFTV), we compared the export prices (EPs) and/or constructed export prices (CEPs) to the normal value (NV), as described in the "U.S. Price" and "Normal Value" sections of this memorandum, below.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average 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 LFTV investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁵² Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

⁵² 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); see also *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).

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen's *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁵³

2. Results of the Differential Pricing Analysis

For Laminazione, based on the results of the differential pricing analysis, Commerce preliminarily finds that 60.21 percent of the value of U.S. sales pass the Cohen's *d* test,⁵⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce 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, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Laminazione.

B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for model matching purposes,

⁵³ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask interested parties to present only arguments on issues which have not already been decided by the CAFC.

⁵⁴ See Memorandum, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Common Alloy Sheet from Italy: Preliminary Margin Calculation for Laminazione Sottile S.p.A.," dated October 6, 2020 (Laminazione Preliminary Calculation Memorandum).

within a certain deadline.⁵⁵ We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the product control numbers of aluminum sheet in this AD investigation. Commerce identified nine criteria for the physical characteristics of the subject merchandise: (1) alloy, (2) clad *versus* non-clad, (3) casting method, (4) non-mechanical surface treatment, (5) coil, (6) nominal width, (7) gauge (nominal thickness), (8) mechanical surface finish, and (9) temper.⁵⁶ We instructed Laminazione to use these product characteristics in its response to the AD questionnaire issued in these investigations.⁵⁷

In accordance with section 771(16) of the Act, we considered all products produced and sold by Laminazione in Italy during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. All U.S. sales were compared to sales of similar merchandise sold in the home market in the ordinary course of trade.

C. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁸ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁵⁹ Laminazione reported the earlier of the invoice date or the shipment date as the date of sale for its home market and its U.S. sales.⁶⁰ Therefore, consistent with 19 CFR 351.401(i) and Commerce’s practice, we used the earlier of Laminazione’s shipment date or invoice date as the date of sale, as applicable.

D. Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under subsection 772(c) of the Act. In accordance with section 772(a) of the Act, we calculated EP for all of

⁵⁵ See *Initiation Notice*, 85 FR at 19445.

⁵⁶ See Commerce’s Product Characteristics Letter.

⁵⁷ *Id.*

⁵⁸ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁵⁹ See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

⁶⁰ See Laminazione June 25 BCDQR at B-30-31, C-24, and Exhibit B-8; see also Laminazione August 4, 2020 BCSQR at 10-11.

Laminazione's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record. Laminazione did not report any sales produced and exported by respondent made by an affiliate in the United States.⁶¹

We calculated EP based on the packed prices that Laminazione charged to the first unaffiliated purchaser in the United States. For Laminazione, we made deductions, where appropriate, from the starting price for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, inland and marine insurance, U.S. warehousing,⁶² U.S. inland freight, and other U.S. transportation expenses (*i.e.*, U.S. brokerage and handling, U.S. customs processing fees, and U.S. harbor maintenance fees), in accordance with section 772(c)(2)(A) of the Act.

E. Duty Drawback

Section 772(c)(1)(B) of the Act states that EP shall be increased by “the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, Commerce traditionally uses (and the United States Court of Appeals for the Federal Circuit (CAFC) has sustained)⁶³ the following two-prong test:⁶⁴ First, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.⁶⁵

In this case, Laminazione provided information to satisfy each of the two prongs.⁶⁶ Because the respondent has satisfied the criteria described above, we have preliminarily granted duty drawback adjustments to Laminazione, consistent with our practice.⁶⁷ Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the duty

⁶¹ See Laminazione June 25 BCDQR at C-21; *see also* Profilglass June 24, 2020 BCDQR at C-14.

⁶² Laminazione reported that it did not incur any warehousing expenses in the United States. *See* Laminazione June 25 BCDQR at C-35 and C-40.

⁶³ *See, e.g., Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Fed. Cir. 2011).

⁶⁴ *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006) (citing *Wheatland Tube Company v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006); *see also Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd v. United States*, 699 F. Supp. 309, 311 (CIT 1988); and *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987)).

⁶⁵ *See, e.g., Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2; *see also Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005), and accompanying IDM at Comment 7; and *Federal Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

⁶⁶ *See* Laminazione May 29, 2020 AQR at Exhibit A-9; Laminazione June 25 BCDQR at C-43-44, D-33, and Exhibits C-14 and D-15; Laminazione August 4, 2020 BCSQR at S1-28-32 and Exhibits S1-13-16C; and Laminazione September 3, 2020 DSQR at S1-43-47.

⁶⁷ *See, e.g., Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying IDM at Comment 1.

imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.⁶⁸ This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.⁶⁹

Based on the facts of this review, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POR, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act. We have added this per unit amount to the U.S. price.⁷⁰

F. Normal Value

1. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product Laminazione was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that Laminazione's home market of Italy is viable. Therefore, we used home market sales in Italy as the basis for NV for Laminazione in accordance with section 773(a)(1)(A) and (B) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷¹ Substantial

⁶⁸ See *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 15.

⁶⁹ The CAFC stated in the *Saha Thai* litigation that "it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha's actual import duty exemption under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP." See *Saha Thai*, 635 F.3d, at 13.

⁷⁰ See Laminazione Preliminary Calculation Memorandum.

⁷¹ See 19 CFR 351.412(c)(2).

differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷² 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,⁷³ 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.⁷⁴

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷⁵

In this investigation, we obtained information from Laminazione regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁷⁶ Our LOT findings are summarized below.

In the home market (HM), Laminazione reported that it made sales through four channels of distribution, *i.e.*, sales to affiliated customers (HM Channel 1); sales to unaffiliated customers (HM Channel 2); sales of tolling services (HM Channel 3);⁷⁷ and consignment sales (HM Channel 4).⁷⁸ Laminazione's customer categories in the home market encompass original equipment manufacturers (OEMs)/end users, trading companies, and further manufacturers.⁷⁹ Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales related administrative activities. Based on

⁷² See 19 CFR 351.412(c)(2); 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) (OJ from Brazil), and accompanying IDM at Comment 7.

⁷³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁷⁴ See *Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷⁵ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁷⁶ See Laminazione May 29, 2020 AQR at A-17-29 and Exhibits A-5-11.

⁷⁷ For its tolling services Laminazione did not produce or take title to the substrate provided by its customer, it converted the substrate into subject merchandise through its tolling operation. See Laminazione June 25 BCDQR at B-60; see also Laminazione August 4, 2020 BCSQR at 12-13.

⁷⁸ See Laminazione June 25 BCDQR at B-28-29.

⁷⁹ *Id.* at B-28.

Laminazione's selling functions chart, we find that Laminazione performed all five selling activities for all home market sales. Of those five selling functions, technical services were performed at the same or at a similar level of intensity in all four HM Channels, whereas sales support, training services and sales related administrative activities were performed at a lower intensity in HM Channel 1 (sales to affiliated customers) than in HM Channels 2 through 4, for which Laminazione reported the same or similar level of intensity. With respect to the provision of logistical services, Laminazione reported the same or similar level of intensity for HM Channels 1 through 3, and a higher performance level for HM Channel 4 (consignment sales).⁸⁰

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Although Laminazione reports differences in the intensity level of certain selling functions performed in two HM Channels (HM Channel 1, sales to affiliates, showed lower intensity for sales support, training services, and sales related administrative activities than HM Channels 2 through 4, and HM Channel 4, consignment sales, showed higher performance level for logistical services), we do not find that these differences are significant enough to warrant finding that those home market sales channels constitute different LOTs. Because we determine that substantial differences in Laminazione's selling activities do not exist between the home market sales channels, we determine that Laminazione's sales in the home market during the POI were made at the same LOT.

With respect to the U.S. market, Laminazione reported that it made EP sales through two U.S. Channels with two customer categories, *i.e.*, unaffiliated OEMs/end users and unaffiliated distributors in the U.S. market.⁸¹ Laminazione provided information on all five selling function categories for analysis, *i.e.*, sales support, training services, technical support, logistical services, and performance of sales related administrative activities, in both U.S. Channel 1 and U.S. Channel 2, and at the same level of intensity.⁸² Therefore, we determine that Laminazione's sales to the U.S. market during the POI were made at one LOT.

Finally, we compared the U.S. LOT to the HM LOT, and found that the selling functions Laminazione performed for its U.S. and home market customers are identical, and at the same or similar levels of intensity.⁸³ Specifically, Laminazione performed the same selling functions in the home market, which are grouped in one LOT, as it performed in the U.S. market, which are also grouped in one LOT.⁸⁴ Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

3. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV and COP information from Laminazione. We examined the cost data and determined that our quarterly

⁸⁰ See Laminazione May 29, 2020 AQR at Exhibit A-5.

⁸¹ See Laminazione June 25 BCDQR at C-22-23.

⁸² See Laminazione May 29, 2020 AQR at Exhibit A-5.

⁸³ *Id.*

⁸⁴ *Id.*

cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on Laminazione's reported data.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses. We made certain changes to the COP data submitted by Laminazione. Specifically, we are treating Laminazione as the manufacturer of its tolled products. Therefore, we revised Laminazione's reported cost for its tolled products to include a cost for the raw materials provided by the customer. In addition, we revised the numerator of Laminazione's general and administrative (G&A) and financial expense rates to exclude certain income items.⁸⁵

In addition, Laminazione provided tolling services to affiliated and unaffiliated customers in the home market under various tolling agreements, where it processes raw materials (ingots, slabs and scrap) provided by the customer into aluminum sheet. According to Laminazione, the customer retains title to the raw materials and controls the sale of the finished product. As such, Laminazione considered the customer to be the manufacturer in reporting to Commerce. In the cost database, Laminazione reported the costs separately by manufacturer. Because raw materials are fungible and there are no relevant physical differences between the raw materials purchased by Laminazione for its own production compared to that received from its customers under tolling agreements, raw materials are physically commingled. Accordingly, Laminazione cannot link specific raw materials provided by a customer to specific tolled products. Laminazione does not count the customer-provided raw materials in its own raw materials inventory. However, it does maintain "virtual" customer-specific inventories in its production control system.

While the raw aluminum material inputs are owned by the customer, this alone does not make the customer the producer. The production process performed by Laminazione is not merely a finishing or a completion operation wherein the merchandise is merely improved and returned to the customer, but is instead subjected to a set of significant manufacturing operations, including the addition of other materials, that transforms the inputs into a different article of merchandise, that is CAAS. Arrangements in which there is a transfer of ownership of finished merchandise for consideration in the form of raw materials and cash may reasonably be regarded as a "sale" of "merchandise."⁸⁶ Consistent with this principle, a party engaged in transforming the inputs into the finished product may be considered a producer of the finished merchandise.

Accordingly, we calculated one weighted average cost for each particular product, whether "tolled" or "self-produced" for use in Commerce's test of COP and comparison market sales

⁸⁵ See Memorandum, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet (CAAS) from Italy: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Laminazione Sottile S.p.A.," dated October 6, 2020 (Laminazione Accounting Memorandum).

⁸⁶ See *United States v. Eurodif S.A. et al.*, 555 U.S. 305, 306 (2009) ("Where, as here, cash plus an untracked fungible commodity are exchanged for a substantially transformed version of the same commodity, the Department may reasonably treat the transaction as the sale of a good under §1673.").

prices.⁸⁷

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

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

We found that, for certain products, more than 20 percent of Laminazione's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

G. Calculation of NV Based on Comparison-Market Prices

We calculated NV for Laminazione based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments and rebates, where appropriate. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland freight and insurance. We made adjustments for differences in circumstance of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, bank charges and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses), where appropriate. We also made adjustments, in accordance with 19 CFR

⁸⁷ For a more detailed discussion on the methodology, *see* Laminazione Accounting Memorandum; *see also* Laminazione Preliminary Calculation Memorandum.

351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limit the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with HM sales of similar merchandise, we also made adjustments for differences in cost attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁸⁸ We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

Further, as discussed in the “Calculation of COP” section above, we determined to include Laminazione’s sales to affiliated and unaffiliated customers in the home market based on tolling contracts in our margin calculations. We adjusted the gross-unit price of Laminazione’s tolled sales by adding an amount commensurate to the amount reported in Laminazione’s cost data base.⁸⁹

VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

IX. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

10/6/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁸⁸ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

⁸⁹ See Laminazione Preliminary Calculation Memorandum.