



A-475-843

Investigation

POI: 04/01/2019 - 03/31/2020

**Public Document**

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April 5, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** Scot Fullerton  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Prestressed Concrete Steel Wire Strand from Italy

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## I. SUMMARY

The Department of Commerce (Commerce) finds that prestressed concrete steel wire strand (PC strand) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The petitioners are Insteel Wire Products, Sumiden Wire Products Corporation, and Wire Mesh Corp. (the petitioners). The mandatory respondents subject to this investigation are CB Tafilati Acciai S.p.A. (CB) and WBO Italcables Societa Cooperativa (WBO). On June 22, 2020, CB informed Commerce that it would not participate as a mandatory respondent in this investigation.<sup>1</sup> The period of investigation (POI) is April 1, 2019, through March 31, 2020.

Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether Home Market Sales with Missing Payment Dates Should Be Disregarded

## II. BACKGROUND

On November 19, 2020, Commerce published the *Preliminary Determination* in this investigation, and invited parties to comment on the decision.<sup>2</sup> On December 18, 2020, CB

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<sup>1</sup> See CB's Letter, "Inability to Participate," dated June 22, 2020.

<sup>2</sup> See *Prestressed Concrete Steel Wire Strand from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 73679 (November 19, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



requested to participate in a hearing to discuss the issues raised in its case and rebuttal briefs.<sup>3</sup> CB did not file a case or rebuttal brief. No other party filed a request to hold a hearing; thus, a hearing was not held.

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. In the *Preliminary Determination*, Commerce notified interested parties that it was unable to conduct on-site verification.<sup>4</sup> In lieu of on-site verification, Commerce sent an in-lieu of verification (ILOV) questionnaire to WBO to collect additional or supporting documentation related to information that WBO had already submitted to the record.<sup>5</sup> On December 17, 2020, we received an ILOV questionnaire response from WBO.<sup>6</sup> We used the ILOV response to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act. Parties submitted case briefs on January 19, 2021,<sup>7</sup> and rebuttal briefs on January 26, 2021.<sup>8</sup>

### III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is PC strand. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

### IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated the export price (EP) and normal value (NV) using the same methodology as the *Preliminary Determination*, with the following exception:

- We have updated the home market sales database and revised credit expenses based on the date of the WBO ILOV Response. *See* Comment 1.

### V. DISCUSSION OF THE ISSUES

#### **Comment 1: Whether Home Market Sales with Missing Payment Dates Should Be Disregarded**

**Background:** During the POI, WBO reported certain home market sales with missing payment dates.<sup>9</sup> Due to the proprietary nature of the circumstances for the missing payment dates, an

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<sup>3</sup> *See* CB's Letter, "Request to Participate in Public Hearing," dated December 18, 2020.

<sup>4</sup> *See Preliminary Determination*, 85 FR at 73680.

<sup>5</sup> *See* Commerce's Letter, "WBO Italcables Societa' Cooperative Questionnaire in Lieu of Verification," dated December 9, 2020 (ILOV Questionnaire).

<sup>6</sup> *See* WBO's Letter, "Questionnaire in Lieu of verification Response," dated December 17, 2020 (WBO ILOV Response).

<sup>7</sup> *See* Petitioners' Letter, "Petitioners' Case Brief," dated January 19, 2021 (Petitioners' Case Brief).

<sup>8</sup> *See* WBO's Letter, "WBO Italcables Societa' Cooperativa's Rebuttal Brief," dated January 26, 2021 (WBO's Rebuttal Brief).

<sup>9</sup> *See Preliminary Determination*; *see also* Memorandum, "Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy: WBO Italcables Societa' Cooperativa Calculations for the Preliminary Results," dated November 12, 2020 (Preliminary Determination Calculation Memorandum) at 4.

expanded discussion relating to certain missing payment dates can be found in the Final Analysis Memo.<sup>10</sup> In the *Preliminary Determination*, we set the missing payment date to the date of the *Preliminary Determination* for home market sales missing payment dates and recalculated credit expenses for those sales.<sup>11</sup>

*Petitioners' Comments*<sup>12</sup>

- The unusual circumstances of these sales effectively render them zero price sales. Accordingly, Commerce should treat those sales as out of the ordinary course of trade and disregard those sales in the margin calculation for the final determination.

*WBO's Rebuttal Comments*<sup>13</sup>

- The petitioners mischaracterized the certain home market sales by alleging that the sales are rendered zero price sales and are outside the ordinary course of trade. Accordingly, Commerce should reject the petitioners' claims and continue to include the disputed home market sales in the margin calculation. In order to account for payment dates, Commerce should continue to set the payment date as the last day where WBO could submit new factual information.

**Commerce's Position:** As discussed below, for the final determination, we continue to consider these home market sales with missing payment dates as sold in the ordinary course of trade.<sup>14</sup> For the home market sales with missing payment dates, we set the payment date as the date the WBO ILOV Response was filed, consistent with our practice, as described below.

The petitioners argue that Commerce must calculate normal value based on sales made in the ordinary course of trade pursuant to section 773(a)(1) of the Act; sales that are made outside the ordinary course of trade should be disregarded in the final determination.<sup>15</sup> To determine when sales are made outside the ordinary course of trade, we conduct an evaluation of all the circumstances particular to any sales in question and consider sales that have extraordinary characteristics.<sup>16</sup> The petitioners argue that the home market sales at issue exhibit extraordinary characteristics and, therefore, are outside the ordinary course of trade.<sup>17</sup> In arguing that sales with extraordinary characteristics are outside the ordinary course of trade, the petitioners emphasize that merchandise sold at aberrational prices or with abnormally high profits are within the realm of examples that constitute sales that might be considered as being outside the ordinary course of trade.<sup>18</sup>

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<sup>10</sup> See Memorandum, "Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy: WBO Italcables Societa' Cooperativa Calculations for the Final Determination," dated concurrently with this memorandum (Final Analysis Memo) at 4-5.

<sup>11</sup> *Id.*

<sup>12</sup> See Petitioners' Case Brief at 2-5.

<sup>13</sup> See WBO's Rebuttal Brief at 1-4.

<sup>14</sup> See Final Analysis Memo at 5-9.

<sup>15</sup> See Petitioners' Case Brief at 3-4.

<sup>16</sup> See 19 CFR 351.102(b)(35).

<sup>17</sup> See Petitioners' Case Brief at 4-5.

<sup>18</sup> See Petitioners' Case Brief at 3; and 19 CFR 351.102(b)(35).

We acknowledge that sales that are made outside the ordinary course of trade should be disregarded; however, we do not find that WBO's home market sales with missing payment dates are outside the ordinary course of trade. In determining whether subject merchandise is being, or is likely to be, sold at less than fair value in an AD determination, a comparison is made between the price of the merchandise in the United States ("export price" or "constructed export price") and its price in a foreign market ("normal value").<sup>19</sup> We agree with WBO that Commerce strives to create a fair comparison between export price and normal value.<sup>20</sup> When the "normal value" is determined by looking at sales prices in the home market, it is the price at which the foreign like product is first "sold" for consumption in the exporting country "in the usual commercial quantities and in the ordinary course of trade."<sup>21</sup> Thus, the price of the merchandise is included in the margin calculation if, among other things, the merchandise is "sold" in the "ordinary course of trade." If it is not "sold" or not sold in the "ordinary course of trade," the merchandise is excluded from the normal value calculation.<sup>22</sup>

The phrase "ordinary course of trade" is defined by statute as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."<sup>23</sup> What is to be considered "outside the ordinary course of trade" includes, "among others, . . . (A) Sales disregarded under section 773(b)(1) (below cost sales of this title); (B) Transactions disregarded under section 773(f)(2) (transactions between affiliated parties, of this title)" and "{s}ituations in which {Commerce} determines that the particular market situation prevents a proper comparison with the export price or constructed export price."<sup>24</sup>

Determining whether a sale or transaction is outside the ordinary course of trade is a question of fact. In making this determination, Commerce considers not just "one factor taken in isolation but rather . . . all the circumstances particular to the sales in question."<sup>25</sup> Commerce's methodology for making this determination is reflected in 19 CFR 351.102(b).<sup>26</sup> Section 351.102(b)(35) of Commerce's regulation states, in part, "{t}he Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question." Examples that might be considered outside the ordinary course of trade include: (1) off-quality merchandise; (2) merchandise produced according to unusual product specifications; (3) merchandise sold at aberrational prices or with abnormally high profits; (4) merchandise sold pursuant to unusual terms of sale; or (5) merchandise sold to an affiliated party at a non-arm's length price.<sup>27</sup> The Statement of Administrative Action accompanying the Uruguay Round

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<sup>19</sup> See section 731 of the Act.

<sup>20</sup> See WBO's Rebuttal Brief at 2 (citing *Thai Plastic Bags Indus. Co. v. United States*, 746 F.3d 1358, 1360 (Fed. Cir. 2014)).

<sup>21</sup> See section 773(a)(1)(B)(i) of the Act.

<sup>22</sup> See *Bergerac v. United States*, 102 F. Supp. 2d 497, 505 (Ct. Int'l Trade 2000).

<sup>23</sup> See section 771(15) of the Act; see also 19 CFR 351.102(b)(35).

<sup>24</sup> *Id.*

<sup>25</sup> See *Murata Mfg. Co., Ltd. v. United States*, 820 F. Supp. 603, 607 (CIT 1993) (citation omitted) (*Murata*).

<sup>26</sup> See, e.g., *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, 35620 (July 1, 1999).

<sup>27</sup> See 19 CFR 351.102(b)(35).

Agreements Act contains similar language and identifies similar types of transactions Commerce may consider to be outside the ordinary course of trade, including (1) sales disregarded as being below-cost; and (2) transactions between affiliated persons.<sup>28</sup>

We disagree with the petitioners' contention that WBO's sales with missing payment dates are outside the ordinary course of trade and should be excluded from our calculations. As an initial matter, sales with missing payment dates are not evidence of an unusual circumstance that, on its own, would lead Commerce to determine that a sale is outside of the ordinary course of trade. Commerce has an established practice of keeping such sales in its calculations and assigning such sales a payment date based on the last day in which a respondent had an opportunity to submit information.<sup>29</sup>

We analyzed the specific characteristics of the sales without payment dates that the petitioners claim result in the sales being unrepresentative and atypical of WBO's home market sales during the POI. The specifics of the petitioners' arguments and some of our analysis concerning these arguments are proprietary in nature and discussed in greater detail in the Final Analysis Memo.<sup>30</sup> As a result of that analysis, we determine that there is no record evidence that supports a finding that the sales with missing payment dates occurred outside of the ordinary course of trade. The record evidence demonstrates that the sales prices and terms of sale of the sales at issue were not aberrational when compared to the other reported sales in WBO's home market database.<sup>31</sup> In accordance with *NSK*,<sup>32</sup> in addition to price and terms of sale, we evaluated the totality of the circumstances of the sales missing payment dates and do not find that the sales exhibit characteristics that are extraordinary in comparison to the market in question. The sales were not for off-quality merchandise,<sup>33</sup> they were not produced according to unusual specifications,<sup>34</sup> there were not aberrational quantities, and they were sold to an unaffiliated party. Accordingly, we determine that the certain home market sales with missing payment dates at issue within the ordinary course of trade for the purposes of the "normal value" calculation under section 773(a)(1)(B)(i).

Finally, the petitioners argue that our citation in the Preliminary Determination Calculation Memorandum to *Wire Rod from Trinidad and Tobago* does not preclude Commerce from finding that the sales without payment dates are outside of the ordinary course of trade.<sup>35</sup> We agree with

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<sup>28</sup> See H.R. Rep. No. 103-316 (1994) (SAA) at 834.

<sup>29</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision Memorandum (IDM) at Comment 4; *Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile*, 70 FR 6618 (February 8, 2005) (*Raspberries from Chile*), and accompanying IDM at Comment 11; and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017), and accompanying IDM at Comment 26.

<sup>30</sup> See Final Analysis Memo.

<sup>31</sup> *Id.* at 5-8.

<sup>32</sup> See *NSK Ltd. v. United States*, 170 F. Supp. 2d 1280 (CIT 2001) (*NSK*).

<sup>33</sup> See WBO ILOV Response at Exhibit VES7.

<sup>34</sup> See Final Analysis Memo.

<sup>35</sup> See Petitioners' Case Brief at 4 (citing Preliminary Determination Calculation Memorandum at 4, discussing *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from*

the petitioners that the facts of *Wire Rod from Trinidad and Tobago* do not preclude Commerce from finding the sales at issue here outside of the course of trade. Our citation to *Wire Rod from Trinidad and Tobago* at the *Preliminary Determination* was to cite Commerce's past practice for setting a proxy date for sales that were missing a payment date in order to calculate credit expenses and was not concerned with a determination of whether the sales were made in the ordinary course of trade. However, for the reasons described above, we have determined that the sales missing payment dates were made in the ordinary course of trade. As detailed in *Wire Rod from Trinidad and Tobago*, it is our normal practice to apply the last day of submitting information as the date of payment when there are missing payment dates.<sup>36</sup> Therefore, we have applied the date of the WBO ILOV Response as the date of payment for WBO's unpaid sales and have recalculated credit expenses, accordingly.

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation in the *Federal Register*.

☒

Agree

☐

Disagree

4/5/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

*Trinidad and Tobago*, 70 FR 12648 (March 15, 2005) (*Wire Rod from Trinidad and Tobago*), and accompanying IDM at Comment 3).

<sup>36</sup> *Id.*