



A-428-849
Administrative Review
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April 28, 2023

MEMORANDUM TO: Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of the 2020-2022
Administrative Review of the Antidumping Duty Order on
Common Alloy Aluminum Sheet from Germany

I. SUMMARY

The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on common alloy aluminum sheet (CAAS) from Germany for the period of review (POR) October 15, 2020, through March 31, 2022. The review was initiated for four companies, of which we selected Novelis Deutschland GmbH (Novelis) and Hydro Aluminium Rolled Products GmbH (HARP) for individual examination as mandatory respondents. We preliminarily determine that the producers or exporters under review sold subject merchandise during the POR at prices below normal value (NV).

II. BACKGROUND

On April 27, 2021, Commerce published in the *Federal Register* an antidumping duty order on CAAS from Germany.¹ On April 1, 2022, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² In April and May 2022, a number of interested parties timely requested a review of the *Order*.³ On May 18, 2022, the

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders*, 86 FR 22139 (April 27, 2021) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 87 FR 19075 (April 1, 2022).

³ See Speira's Letters, "Common Alloy Aluminum Sheet from Germany," dated April 1, 2022; Novelis Letter, "Novelis Deutschland's Request for Antidumping Administrative Review Common Alloy Aluminum Sheet from Germany," dated April 28, 2022, J.L. Clark Inc.'s (JL Clark) Letter, "Administrative Review of the Antidumping Order for Common Alloy Aluminum Sheet from Germany (Case No. A-428-849)," dated April 29, 2022; Constellium Rolled Products Singen GmbH & Co. KG (Constellium) Letter, "Request for Review – 2020-2022



Domestic Interested Parties⁴ withdrew, in full, their request that Commerce conduct an administrative review of the *Order*.⁵ On July 14, 2022, Commerce initiated an administrative review of the *Order* with respect to Constellium Rolled Products Singen GmbH & Co. KG (Constellium), HARP, Novelis, and Speira GmbH (Speira).⁶

In the *Initiation Notice*, Commerce explained that if, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), it limited the number of respondents selected for individual examination, then it intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data regarding entries of subject merchandise during the POR.⁷ On July 25, 2022, we placed on the record of this review CBP data regarding U.S. entries of subject merchandise during the POR from the companies under review and invited comments from interested parties on that data and on respondent selection.⁸ On August 1, 2022, Speira submitted comments regarding respondent selection.⁹ On August 31, 2022, we selected HARP and Novelis as mandatory respondents.¹⁰

Between September 2, 2023, and April 3, 2023, Commerce issued the AD questionnaire and supplemental questionnaires to, and received timely responses thereto from, the mandatory respondents.¹¹

Antidumping Duty Review Period,” dated May 2, 2022; and Letter from Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members, Aleris Rolled Products, Inc.; Arconic Corporation; Commonwealth Rolled Products Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; and Texarkana Aluminum, Inc., “Petitioners’ Request for Initiation of First Administrative Review,” dated May 2, 2022.

⁴ The Domestic Interested Parties are the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic Corporation; Commonwealth Rolled Products Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; and Texarkana Aluminum, Inc.

⁵ See Domestic Interested Parties’ Letter, “Petitioners’ Withdrawal of Request for Initiation of First Administrative Review,” dated May 18, 2022.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 42144 (July 14, 2022) (*Initiation Notice*).

⁷ *Id.*

⁸ See Memorandum, “Automated Commercial System Shipment Query,” dated July 25, 2022.

⁹ See Speira’s Letter, “CBP Data Comments,” dated August 1, 2022.

¹⁰ See Memorandum, “Respondent Selection,” dated August 31, 2022.

¹¹ See Commerce’s Letter, “Request for Information,” dated September 2, 2022; *see also* Speira’s Letter, “Section A Response,” dated September 30, 2022 (Speira AQR) “{b}eginning June 1, 2021, HARP assumed new ownership and took on the name of Speira GmbH.”); Novelis’ Letter, “Novelis Deutschland’s Section A Response,” dated October 3, 2022 (Novelis AQR); Speira’s Letter, “Sections B-D Response,” dated October 21, 2022 (Speira BCDQR); Novelis’ Letter, “Novelis Deutschland’s Section B Response,” dated October 24, 2022 (Novelis BQR); Novelis’ Letter, “Novelis Deutschland’s Section C Response,” dated October 24, 2022 (Novelis CQR); Novelis’ Letter, “Novelis Deutschland’s Section D Response,” dated October 31, 2022 (Novelis DQR); Speira’s Letter, “Supplemental Section A Response,” dated January 23, 2023; Speira’s Letter, “Addendum to Supplemental Section A Response,” dated February 3, 2023; Speira’s Letter, “Supplemental Section B Response,” dated February 16, 2023; Speira’s Letter, “Supplemental Section C Response,” dated March 1, 2023; Novelis’ Letter, “Novelis Deutschland’s Supplemental Section A-C Response,” dated March 1, 2023; Novelis’ Letter, “Novelis Deutschland’s Response to Question 22 of Supplemental Questionnaire,” dated March 3, 2023; Speira’s Letter, “Tolling Operations Supplemental Response,” dated March 28, 2023; Novelis’ Letter, “Novelis Deutschland’s Supplemental Section D Response,” dated March 28, 2023 (Novelis SDQR); Speira’s Letter, “Supplemental Section D Response,” dated April 3, 2023 (Speira SDQR); and Novelis’ Letter, “Novelis Deutschland’s Response to Question 5 of the Department’s Supplemental Section D Questionnaire,” dated April 3, 2023 (Novelis SDQR II).

Between October 18, 2022, and January 9, 2023, the Domestic Interested Parties filed comments regarding Novelis' and Speira's questionnaire responses.¹² On December 15, 2022, Commerce extended the deadline for issuing the preliminary results of this review from January 3, 2023, to April 28, 2023.¹³ In April 2023, interested parties filed comments for Commerce's consideration in the preliminary results of the review.¹⁴

III. SCOPE OF THE *ORDER*

The products covered by the *Order* are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of the *Order* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of the *Order* is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, H-39, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

¹² See Domestic Interested Parties' Letter, "Petitioners' Comments On Speira GmbH's Response to Section A of the Department's AD Questionnaire," dated October 17, 2022; see also Domestic Interested Parties' Letter, "Petitioners' Comments on Deficiencies in HARP/Speira's Response to Sections B and C of Department's Antidumping Questionnaire," dated December 1, 2022; Domestic Interested Parties' Letter, "Petitioners' Comments on HARP/Speira Response to Section D," dated December 20, 2022; Domestic Interested Parties' Letter, "Petitioners' Comments on Novelis' Sections A, B, C, and D Questionnaire Responses," dated January 9, 2023.

¹³ See Memorandum, "Extension of Deadline for the Preliminary Results of the 2020-2022 Antidumping Duty Administrative Review," dated December 15, 2022.

¹⁴ See Novelis' Letter, "Novelis Deutschland's Pre-Preliminary Comments," dated April 6, 2023; see also Speira's Letter "Common Aluminum Alloy Sheet from Germany," dated April 6, 2023; Domestic Interested Parties' Letter, "Petitioners' Comments in Advance of the Preliminary Results for HARP/Speira," dated April 14, 2023; Domestic Interested Parties' Letter, "Petitioners' Comments in Advance of the Preliminary Results for Novelis," dated April 14, 2023; Novelis' Letter, "Novelis Deutschland's Pre-Preliminary Rebuttal Comments," dated April 20, 2023; and Speira's Letter, "Rebuttal to Petitioners' Pre-Preliminary Results Comments," dated April 21, 2023.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of the *Order* may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

IV. PRELIMINARY SUCCESSOR-IN-INTEREST DETERMINATION

Commerce initiated this administrative review with respect to four companies, including HARP and Speira.”¹⁵ Speira reported that during the POR, “HARP assumed new ownership and took on the name of Speira GmbH.”¹⁶

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), when Commerce receives information concerning, or a request from an interested party for a review of, an order which shows changed circumstances sufficient to warrant a review of such order, after publishing notice of the review in the *Federal Register*, Commerce shall conduct a review of the determination based on those changed circumstances. While Commerce has used a changed circumstance review (CCR) to make a successor-in-interest determination where there have been changes in the name or the structure of a foreign producer or exporter, Commerce has also made a successor-in-interest determination in the context of an administrative review.¹⁷ Consistent with this practice, we have considered whether Speira GmbH is the successor-in-interest to HARP in this review.

In determining whether one company is the successor-in-interest to another company for purposes of the Act, Commerce will examine a number of factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.¹⁸ Although no single factor, or combination of factors, will necessarily provide a dispositive indication of successorship, generally Commerce will consider one company to be a successor-in-interest to another company if its operations are not materially dissimilar to those of

¹⁵ See *Initiation Notice*.

¹⁶ See Speira AQR at 1.

¹⁷ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 85 FR 83891 (December 23, 2020), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; and *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying IDM at Comment 1.

¹⁸ See, e.g., *Stainless Steel Bar from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 22622 (April 23, 2014), and accompanying Preliminary Decision Memorandum (PDM) at 2-3, unchanged in *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 63081 (October 22, 2014).

the other company.¹⁹ Thus, if the totality of the evidence demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the prior company, Commerce will find the new company to be the successor-in-interest to the prior company.²⁰

Speira reported that it has the same management and operational and organizational structure, uses the same production facilities, and has the same customers as HARP.²¹ Thus, we preliminarily determine that Speira GmbH is the successor-in-interest to Hydro Aluminium Rolled Products GmbH.

V. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review in accordance with section 751(a) of the Act, and 19 CFR 351.213.

A. Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether the mandatory respondents sold subject merchandise at less than NV, during the POR, we compared the export prices (EP) and constructed export prices (CEP) of those sales to NVs as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average method) unless it determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of an administrative review, Commerce nevertheless

¹⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006).

²⁰ See, e.g., *Certain Pasta from Italy: Final Results of Changed Circumstances Review*, 86 FR 24845 (May 10, 2021).

²¹ See, e.g., Speira AQR at 1 (“This submission is made on behalf of Speira GmbH (‘Speira’), a producer and exporter of subject merchandise originating in Germany. Until May 31, 2021, the company was formerly named Hydro Aluminium Rolled Products GmbH (‘HARP’). Beginning June 1, 2021, HARP assumed new ownership and took on the name of Speira GmbH. Speira uses the same production facilities in Germany as the former HARP. For the reasons discussed in this Section A response, Speira is the successor-in-interest to HARP, as Speira uses the same production facilities as the former HARP, has the same management as the former HARP, has the same customers as the former HARP and the same operational and organizational structure as the former HARP. Only the ownership and name are different.”); see also Speira SDQR at Exhibits 9a-9d, and Exhibit 10 for proprietary information concerning Speira’s supplier relationships that Commerce considered in its preliminary successor-in-interest analysis.

finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in a less-than-fair-value investigation.²²

In numerous investigations and administrative reviews, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation consistent with 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²³ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to evaluate its approach in this area based on comments received in this review and the application of the differential pricing analysis on a case-by-case basis, 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.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, ZIP code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR 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, we applied the “Cohen’s *d* test.” 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, we calculated the Cohen’s *d* coefficient 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, we used the Cohen’s *d* coefficient 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

²² See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

²³ 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).

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 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, we used the "ratio test" to assess 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, we examined whether using only the average-to-average method can appropriately account for such differences. In considering this question, we tested 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 these preliminary results.

2. Results of the Differential Pricing Analysis

We preliminarily found that 83.96 percent of the value of Novelis' U.S. sales passed the Cohen's *d* test. This confirms the existence of a pattern of prices that differ significantly among

purchasers, regions, or time periods.²⁴ However, we preliminarily found that there is not a meaningful difference in the weighted-average dumping margin calculated using the average-to-average comparison method and the weighted-average dumping margin calculated using the average-to-transaction comparison method when both methods are applied to all of Novelis' U.S. sales.²⁵ Thus, we preliminarily used the average-to-average comparison method for all of Novelis' U.S. sales to calculate its weighted-average dumping margin.

We preliminarily found that 59.98 percent of the value of HARP/Speira's U.S. sales passed the Cohen's *d* test. This confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.²⁶ Further, we preliminarily found that there is not a meaningful difference between the weighted-average dumping margin calculated using the average-to-average method to all U.S. sales and the weighted-average dumping margin calculated using an alternative comparison method where we applied the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method for those U.S. sales which did not pass the Cohen's *d* test. Thus, we preliminarily used the average-to-average comparison method for all of HARP/Speira's U.S. sales to calculate its weighted-average dumping margin.

B. Date of Sale

Pursuant to 19 CFR 351.401(i), “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business.” The regulations provide further that Commerce may use a date other than the date of invoice as the date of sale if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sale.²⁷ 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 were established.²⁸

Novelis and HARP/Speira reported the earlier of the invoice date or the shipment date as the date of sale for their U.S. and home market sales.²⁹ Because these reporting methodologies are in accordance with Commerce's practice, we have preliminarily accepted the dates of sale reported by Novelis and HARP/Speira.

²⁴ See Memorandum, “Preliminary Results Analysis Memorandum for Novelis Deutschland GmbH,” dated concurrently with this memorandum (Novelis Preliminary Analysis Memorandum).

²⁵ *Id.*

²⁶ See Memorandum, “Preliminary Results Analysis Memorandum for Speira GmbH,” dated concurrently with this memorandum (Speira Preliminary Analysis Memorandum).

²⁷ 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)).

²⁸ 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 IDM at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

²⁹ See Novelis BQR at 28 and Novelis CQR at 27; see also Speira BSDQR at 19 and 55.

C. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the mandatory respondents during the POR that fit the description in the “Scope of the *Order*” section above to be foreign like products. Pursuant to 19 CFR 351.414(f)(3), we compared the mandatory respondents’ prices of U.S. sales of subject merchandise to the normal value based on the sale prices of their respective home market sales of foreign like products, where appropriate, in determining whether dumping occurred during the POR.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to be the basis for normal value, according to section 771(16)(A) of the Act, we based normal value on the mandatory respondents’ sales of the most similar foreign like product made in the ordinary course of trade. To identify identical or similar products sold in the home market, we matched foreign like products to the products sold in the United States based on the physical characteristics reported by Novelis and HARP/Speira. In the order of importance, these physical characteristics are as follows: alloy, “clad vs. not clad,” casting method, non-mechanical surface treatment, coil, nominal width, gauge (nominal thickness), mechanical surface finish, and temper.³⁰

D. Export Price and Constructed 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 {776} (c).” In accordance with section 772(a) of the Act, we calculated EPs for certain U.S. sales where Novelis or HARP/Speira sold subject merchandise directly to the first unaffiliated purchaser in the United States before the date of importation.

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter ...” In accordance with section 772(b) of the Act, we calculated CEPs for certain U.S. sales where a U.S. affiliated seller sold subject merchandise to unaffiliated purchasers.

We based the starting prices for calculating EP and CEP on the prices of sales of subject merchandise sold and exported to unaffiliated U.S. customers and the prices of affiliated importers’ sales of subject merchandise to unaffiliated U.S. customers, respectively. We calculated EPs and CEPs for both respondents by deducting movement expenses, including import duties, from the gross unit sales price, where appropriate, in accordance with section

³⁰ See, e.g., Novelis BQR, Novelis CQR, and Speira BCDQR.

772(c)(2)(A) of the Act.³¹ For HARP/Speira we adjusted for billing adjustments, where appropriate.

In accordance with sections 772(d)(1) and (3) of the Act, to calculate CEP we also deducted from the gross unit sales price selling expenses, and allocated profit, associated with economic activities occurring in the United States, which include direct selling expenses and indirect selling expenses.

E. 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 volume of respondent's home market sales of the foreign like product to the volume of its U.S. sales of 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.

We have determined that the aggregate volume of each of the mandatory respondent's home market sales of the foreign like product is greater than five percent of the aggregate volume of each respondent's U.S. sales of subject merchandise during the POR.³² Therefore, we used home market sale prices as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

2. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined NV based on sale prices in the comparison market at the same level of trade (LOT) as the EP or CEP.³³ We identified the LOT for home market sale price and EP based on the starting price of the sales.³⁴ We identified the LOT for CEP based on the starting price of the sale, as adjusted under section 772(d) of the Act.

We will find that sales were made at different LOTs if they were made at different marketing stages (or their equivalent).³⁵ Substantial differences in the selling activities performed in a channel of trade are a necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing in the channels.³⁶ To determine whether the home market sales were made at a different LOT than the EP or CEP sales, we examined stages in the

³¹ See *Stainless Steel Bar from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75789 (December 19, 2014) (where Commerce treated similar sales, *i.e.*, sales made after importation from an unaffiliated warehouse to the ultimate U.S. customer, as CEP sales).

³² See Novelis AQR at Exhibit A-1 and Speira AQR at A-1.

³³ See section 773(a)(7)(A) of the Act.

³⁴ See 19 CFR 351.412(c)(1)(i) and (iii).

³⁵ See 19 CFR 351.412(c)(2).

³⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

marketing process and the selling functions performed along the chain of distribution between the exporter/producer and the unaffiliated customer.³⁷ Where we find that the home market sales are at a different LOT than the LOT of the U.S. sales to which they are being compared, as manifested by a pattern of consistent price differences between the sales on which NV is based and the home market sales made at the same LOT as the U.S. sale, and the difference affects price comparability, we will make an LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.³⁸

If Commerce is unable to compare sales prices of subject merchandise to NV based on sales prices of the foreign like product at the same LOT as the U.S. sales, it may compare U.S. prices to NV based on sale prices of the foreign like product at a different LOT. Where possible, when comparing CEPs or EPs to NV based on prices of sales at a different LOT, Commerce will make an LOT adjustment under section 773(a)(7)(A) of the Act. If the comparison market LOT is at a more advanced stage of distribution than the LOT of the CEP sale, and there is no basis for determining whether the difference in LOTs between the sales affects price comparability (*i.e.*, an LOT adjustment is not possible), Commerce shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁹

Novelis reported that during the POR it sold the foreign like product in the home market through two channels of distribution (consignment basis and direct shipment to unaffiliated customers),⁴⁰ and sold the subject merchandise in the United States through two channels of distribution (direct shipment to unaffiliated customers and through a U.S. affiliate).⁴¹ We examined the selling activities performed in each channel of distribution and the levels of intensity at which these activities were performed.⁴² As part of our examination, we requested that Novelis provide documentation supporting its reported selling activities. After reviewing the record, we preliminarily determine that Novelis did not provide sufficient documentation to support its claim regarding the levels of intensity and the performance of the reported selling activities.⁴³ Specifically, we find that Novelis did not provide the requested supporting documentation for each of the reported selling activities nor is it clear how certain documentation that was provided relates to the reported selling activities.⁴⁴ Therefore, we preliminarily find that the record does not support finding that Novelis' U.S. and home market sales were made at different LOTs, and, thus, no LOT adjustment or CEP offset is warranted.

HARP/Speira reported that during the POR it sold the foreign like product in the home market through two channels of distribution (consignment basis and direct shipment to unaffiliated customers)⁴⁵ and sold subject merchandise in the United States through three channels of distribution (consignment basis, direct shipment to unaffiliated customers, and through a U.S.

³⁷ See 19 CFR 351.412(c)(2).

³⁸ See, *e.g.*, *Plate from South Africa*, 62 FR at 61732-61733.

³⁹ See, *e.g.*, *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 75 FR 50999, 51001 (August 18, 2010).

⁴⁰ See Novelis BQR at 27.

⁴¹ See Novelis CQR at 26; *see also* Novelis AQR at Exhibit A-10.

⁴² See Novelis AQR at Exhibit A-10.

⁴³ See Novelis AQR at 13 – 17 and Exhibit A-10 and Novelis ABCQR at 3-5 and Exhibits SA-2(A) and SA-2(B).

⁴⁴ *Id.*

⁴⁵ See Speira AQR at 22.

affiliate).⁴⁶ HARP/Speira reported that it performed the following activities in all five channels of distribution and for each of these activities, it reported that it performed the activity at nearly identical levels of intensity in each channel: (1) sales support; (2) training services; (3) technical support; (4) logistical service; and (5) sales related administrative services.⁴⁷ In response to Commerce’s request to provide a quantitative analysis showing how the expenses assigned to POR sales made at different claimed levels of trade impacted price comparability, HARP/Speira reported that “{it} does not have different pricing practices based on each level of trade and HARP/Speira sells CAAS based on the market price applicable on the market at each point in time.”⁴⁸ Because HARP/Speira: (1) performed the same selling activities in each channel of distribution and, the level of intensity at which it performed a particular activity did not vary between channels of distribution; (2) indicated that its prices do not differ based on the LOT; and (3) did not provide the requested quantitative analysis, we preliminarily find that the record does not support finding that HARP/Speira U.S. and home market sales were made at different LOTs, and, thus, no LOT adjustment or CEP offset is warranted.

3. Cost of Production Analysis

a. Cost Averaging Methodology

Commerce’s practice is to calculate period-wide weighted-average costs of production (COP) for the POR. However, we recognize that possible distortions may result if we use Commerce’s normal period-wide average cost methodology during a time of significant cost changes. In determining whether to deviate from Commerce’s normal methodology of calculating period-wide weighted-average COPs, we evaluate two primary criteria: (1) changes in the cost of manufacturing (COM) reported by the respondent during the POR must be deemed significant; (2) record evidence indicates that sale prices during the shorter cost-averaging periods could be reasonably linked with the COPs during the same shorter cost-averaging periods.⁴⁹ We have examined the cost data provided by the mandatory respondents and preliminarily determined that Commerce’s quarterly cost methodology is warranted.⁵⁰ Therefore, we used quarterly cost-period weighted averages, instead of period-wide weighted average COPs, in our margin calculations.⁵¹

b. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP by adding together the materials and fabrication costs incurred to produce the foreign like product, general and

⁴⁶ *Id.*

⁴⁷ *Id.* at 22-23, and Exhibit 12.

⁴⁸ *Id.* at 25.

⁴⁹ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying IDM at Comment 6; see also *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying IDM at Comment 4.

⁵⁰ See Speira Preliminary Analysis Memorandum and Novelis Preliminary Analysis Memorandum.

⁵¹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013), and accompanying PDM at Section D “Cost of Production,” unchanged in *Notice of Affirmative Final Determination for Sales at Less than Fair Value: Diffusion-Annealed, Nickel-Plate Flat-Rolled Steel Products from Japan*, 79 FR 19868 (April 10, 2014).

administrative expenses (G&A), and financial expenses.⁵² We relied on the cost data, without adjustment, submitted by Novelis to calculate COP.⁵³ We adjusted the costs reported by HARP/Speira pursuant to section 773(f) of the Act.⁵⁴

c. Test of Home Market Sales Prices

Pursuant to section 773(b) of the Act, on a product-specific basis, we compared the quarterly weighted-average COPs to the prices of home market sales of the foreign like product to determine whether the sales prices were 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 quarterly COPs that were exclusive of selling and packing expenses and used sale prices that were exclusive of billing adjustments, discounts, and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses. For the cost recovery test, we use period-wide COPs that were exclusive of selling and packing expenses.

d. 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 home market sales of a given product were at prices less than the COP, we did not disregard the below-cost sales of that product because we determined 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 were at prices less than the COP, we disregarded the below-cost sales when: 1) they were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POR, 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 Novelis and HARP/Speira's home market sales during the POR were at prices less than the COP, they were made within an extended period of time, and such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our calculation of NV as outside of the ordinary course of trade, and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

⁵² See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁵³ See, generally, Novelis DQR and Speira BCDQR; see also Novelis SDQR and SDQR II and Speira SDQR.

⁵⁴ See Speira Preliminary Analysis Memorandum.

4. Calculation of NV Based on Comparison Market Prices

We calculated NV for respondents based on packed, delivered, or ex-works prices to unaffiliated customers in Germany. We made adjustments, where appropriate, from the starting price for billing adjustments, discounts, and rebates in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We adjusted for differences in export and domestic packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, respectively. We made adjustments for circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with NV based on home market sale prices of merchandise similar to that sold in the U.S. market, we adjusted for differences in costs attributable to differences in the physical characteristics of 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 cost of manufacturing for the foreign like product and subject merchandise.⁵⁵

VI. CURRENCY CONVERSION

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

VII. RECOMMENDATION

We recommend applying the above methodologies for the preliminary results of this review.

Agree

Disagree

X



Signed by: LISA WANG

Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

⁵⁵ See 19 CFR 351.411(b).